



## American Apartheid: Why Scandinavian Prisons Are Superior

*"Open" prisons, in which detainees are allowed to live like regular citizens, should be a model for the U.S.*

*by Doran Larson*

IT'S A POSTCARD-PERFECT DAY ON SUOMEN-linna Island, in Helsinki's South Harbor. Warm for the first week of June, day trippers mix with Russian, Dutch and Chinese tourists sporting sun shades and carrying cones of pink ice cream.

"Is this the prison?" asks a 40-something American woman wearing cargo pants and a floral sleeveless blouse.

Linda, my guide and translator, pauses beside me between the posts of an open picket fence. After six years of teaching as a volunteer inside American prisons, I've come from the private college where I work to investigate the Scandinavian reputation for humane prisons. It's the end of

my twelfth prison tour, and I consider the semantics of the question: If you can't tell whether you're in a prison, can it *be* a prison? I've never considered this in so many words. Yet I find that I know the answer, having felt it inside a prison cell in Denmark: *There is no punishment so effective as punishment that nowhere announces the intention to punish.* Linda is an intern working on a degree in public policy. Young and thoroughly practical, she smiles and says to the tourists, "Yes, you are here."

The Americans look shocked and afraid. The father glances at his wife. The wife cocks her head back, as though she's ventured too far. The son – fit as my La Crosse-playing students – takes a step in reverse, just outside the gate, and says to his mother: "I *told* you." (Linda clearly wonders what she's said to cause such a reaction).

Then the son adds, his voice cracking on a nervous attempt at sarcasm: "It's sure reassuring to know we're being protected from criminals."

The Americans gather into a family huddle. Their whispers grow hot. The son grabs the top of his head – unable to believe this conversation is even taking place. Their response speaks to a particularly American reaction to prisons, and there's nothing unusual in it. But we'll leave them here to fill in the background needed to understand their dilemma.

...

SUOMENLINNA ISLAND HAS HOSTED AN "open" prison since 1971. The 95 male prisoners leave the prison grounds each day to do the township's general maintenance or commute to the mainland for work or

study. Serving time for theft, drug trafficking, assault or murder, all the men here are on the verge of release. Cellblocks look like dorms at a state university. Though worse for wear, rooms feature flat-screen TVs, sound systems and mini-refrigerators for the prisoners who can afford to rent them for prison-labor wages of 4.10 to 7.3 Euros per hour (\$5.30 to \$9.50). With electronic monitoring, prisoners are allowed to spend time with their families in Helsinki. Men here enjoy a screened barbecue pit, a gym and a dining hall where prisoners and staff eat together. Prisoners throughout Scandinavia wear their own clothes. Officers wear navy slacks, powder-blue shirts, nametags and shoulder bars; but they carry no batons, handcuffs, Tasers or pepper-spray. The assistant warden who has led Linda and me around, Timo, looks like a wizened roadie: graying beard, black vest and jeans, red shirt, biker boots and a taste for slim cigars.

One might wonder just where is the "prison" part of this Scandinavian open prison. Where are the impenetrable barriers? The punishing conditions that satisfy an American sense of justice?

First, an important caveat: Nordic prisons are not all open facilities. Closed prisons here date to the mid-19th century, copied from Philadelphia's Eastern State, or New York's Auburn, back when those prisons represented models of humane treatment. To an American eye, these prisons look like prisons: 10-meter walls, cameras, steel doors. I've heard men describe Scandinavian closed-prison conditions in ways that echo those of the American prison where I have led a writing

## INSIDE

From the Editor	10
South Africa's Prison Problems	12
Jailed for Parking Tickets	16
Private Probation Services	18
ALEC Taskforce Disbands	22
Incarcerated Veterans' Programs	28
Parole Term Fixing for CA Lifers	32
Justice Reforms Cut in Oklahoma	34
\$16 Million Awarded to NY Prisoner	38
PLN Sues Florida Jail	42
CCA and GEO Resolutions Filed	44
Law Library Access Claim Rejected	50
News in Brief	56

## **DON'T LET THE TIME DO YOU. STAY CONNECTED!**

**Guaranteed savings of up to 90%** on your long distance, out-of-state, and international calls from Federal prisons, county jails and State prisons.

### **Best Rates and Plans**

Multi-number Friends & Family Package for as little as \$10.00/month

More plans & more numbers than any operator -

### **No Hidden Fees**

**What We Say Is What You Pay** – NO additional “fees”, “charges” or “surcharges”

International calls are billed only on call acceptance. No bogus rounding

### **No Contracts, No Penalties, No Hassles**

No long term commitments – Service is always month – to – month. Cancel at anytime with NO penalties and NO cancellation fees with just a phone call or an e-mail.

### **Fast and EZ Setup**

We **ALWAYS** have numbers and can set up instantaneously online or on the phone.

## **Special Commitment, Civil Detention & Halfway House**

\$0.40 connection charge from payphones  
lowest in the business

Voice Mail and Call Recording options

Call, write, e-mail or have your loved ones check out our website for more information.

SP Telecom  
1220 Broadway - # 801-A  
New York, NY 10001  
[www.inmatefone.com](http://www.inmatefone.com)  
e-mail: [clients@inmatefone.com](mailto:clients@inmatefone.com)  
Español: [soporte@inmatefone.com](mailto:soporte@inmatefone.com)  
Call: 1(845)326-5300 (Collect calls are NOT accepted)  
Español: 1(845)342-8110 (Llamadas por cobrar no se aceptan)

Some restrictions apply. Plan availability depends on the Institution

## **NO PERMITA QUE EL TIEMPO LE SEPRE DE SU FAMILIA!**

**Garantizamos ahorros de hasta el 90%** en sus llamadas de larga distancia, entre estados, y en las llamadas internacionales desde prisiones federales, estatales y locales.

### **Los mejores Planes y Tarifas**

Plan para familias y amigos con varios numeros por tan solo \$10.00/ mes .

Mas planes y numeros que ningun otro operador .

### **No hay letra pequeña**

**Lo Que Ves Es Lo Que Pagas**, NO hay ningun otro cargo extra.

Las llamadas internacionales solo se facturan cuando es aceptada por el familiar al otro lado del hilo telefonico.

**No hay contrato , permanencia ni ningun tipo de travas .**

El servicio siempre se ofrece en base a un mes de duracion pudiendo renovar el mismo todo los meses sin ningun cargo por la terminacion del servicio y lo puede solicitar con una simple llamada de telefono o con un correo electronico (E-MAIL)

**La solicitud se puede hacer rapida y muy facil .**

Nosotros siempre tenemos numeros y podemos procesar to registro inmediatamente en lines o por telefono.

**Detenidos civiles en carceles especiales y reclusos en camino a casas de medio camino le ofrecemos los siguientes servicios.**

\$0.40 de recarfo desde telefonos de prepago, la tarifa mas baja en el sector .

Buzon de Voz y la posibilidad de grabar las llamadas .





## Prison Legal News

a publication of the  
Human Rights Defense Center  
[www.humanrightsdefensecenter.org](http://www.humanrightsdefensecenter.org)

### EDITOR

Paul Wright

### MANAGING EDITOR

Alex Friedmann

### COLUMNISTS

Michael Cohen, Kent Russell,  
Mumia Abu Jamal

### CONTRIBUTING WRITERS

Mike Brodheim, Matthew Clarke,  
John Dannenberg, Derek Gilna,  
Gary Hunter, David Reutter, Mike Rigby,  
Brandon Sample, Mark Wilson,  
Joe Watson, Christopher Zoukis

### RESEARCH ASSOCIATE

Mari Garcia

### ADVERTISING DIRECTOR

Susan Schwartzkopf

### LAYOUT

Lansing Scott

### HRDC LITIGATION PROJECT

Lance Weber—General Counsel  
Monique Roberts—Staff Attorney  
Robert Jack—Staff Attorney

### PLN is a monthly publication.

A one year subscription is \$30 for prisoners, \$35 for individuals, and \$90 for lawyers and institutions. Prisoner donations of less than \$30 will be pro-rated at \$3.00/issue. Do not send less than \$18.00 at a time. All foreign subscriptions are \$100 sent via airmail. PLN accepts Visa and Mastercard orders by phone. New subscribers please allow four to six weeks for the delivery of your first issue. Confirmation of receipt of donations cannot be made without an SASE. PLN is a section 501 (c)(3) non-profit organization. Donations are tax deductible. Send contributions to:

Prison Legal News

PO Box 1151

Lake Worth, FL 33460

561-360-2523

[info@prisonlegalnews.org](mailto:info@prisonlegalnews.org)

[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

PLN reports on legal cases and news stories related to prisoner rights and prison conditions of confinement. PLN welcomes all news clippings, legal summaries and leads on people to contact related to those issues.

Article submissions should be sent to - The Editor - at the above address. We cannot return submissions without an SASE. Check our website or send an SASE for writer guidelines.

Advertising offers are void where prohibited by law and constitutional detention facility rules.

PLN is indexed by the *Alternative Press Index*, *Criminal Justice Periodicals Index* and the *Department of Justice Index*.

## Scandinavian Prison Model (cont.)

workshop since 2006: officials intent on making life onerous, long hours in lockup, arbitrarily enforced rules.

Yet inside the four high-security prisons I've visited in Denmark, Norway, Sweden and Finland, common areas included table tennis, pool tables, steel darts and aquariums. Prisoner art-ornamented walls painted in mild greens and browns and blues. But the most profound difference is that correctional officers fill both rehabilitative and security roles. Each prisoner has a "contact officer" who monitors and helps advance progress toward return to the world outside – a practice introduced to help officers avoid the damage experienced by performing purely punitive functions: stress, hypertension, alcoholism, suicide and other job-related hazards that today plague American corrections officers, who have an average life expectancy of 59.

This is all possible because, throughout Scandinavia, criminal justice policy rarely enters political debate. Decisions about best practices are left to professionals in the field, who are often published criminologists and consult closely with academics. Sustaining the barrier between populist politics and results-based prison policy are media that don't sensationalize crime – if they report it at all. And all of this takes place in nations with established histories of consensual politics, relatively small and homogenous populations, and the best social service networks in the world, including the best public education.

Standing outside a Nordic closed prison, the American son would have felt perfectly at ease. But inside, northern Europe's closed facilities operate along the lines of humanism that American prisons abandoned early on, under a host of pressures – such as overcrowding, the push to make prisons profitable by contracting out collective labor, the use of unpaid prisoners as private farmhands and, since 1973, the rise of an \$80 billion mass incarceration industry. There is also the matter of scale. The prison population of Sweden (6,900) is less than half the population of New York's Rikers Island jail at its height (14,000). Several prisons in the U.S. each hold nearly twice the prison population of Finland. This is not simply the difference between large and much smaller countries. U.S. incarceration

rates are the highest in the world, about 10 times those throughout Scandinavia, which are among the world's lowest.

There's certainly a tipping point at which smaller numbers of prisoners allow for a different quality of prison practice. But the issue here is the instinctive, visceral fear of prisons and prisoners. It is about basic assumptions regarding what states must do to people who violate the law, not only in order to secure the safety, but to satisfy the sense of justice, of law-abiding citizens. Even if the U.S. prison population dropped by 90 percent overnight, it's not clear that U.S. prison officials, under the eye of the public and politicians, would either know how or be allowed to handle the remaining prisoners differently. And this is at a time when even tough-on-crime politicians acknowledge that states are going broke supporting prisons with no positive return to taxpayers – including no net boost to public safety. So this is both a philosophical quandary and a practical question: How is it that Nordic prisons that seem so cushy yield recidivism rates one-half to one-third of those in the U.S. (20-30 percent versus 40-70 percent)? And why can't the U.S. reduce prison populations not simply through drug courts and very tepid sentencing reforms but by creating more transformative prisons? The answers emerge from the history that stands behind those American tourists' nervousness.

Twenty years of social science research has drawn a consistently clear portrait of the rise of America's unprecedented regime of mass incarceration: Over the past four decades, Republicans and Democrats have waged a "tougher on crime than you" arms race built upon white unease with the disruption of the old racial order brought about by the civil rights and Black Power movements. Once segregation was declared unconstitutional and black activists began to demand equal rights, white fear called out for "law and order." Seeking votes and profits, politicians and media have encouraged the white public's worst fears of becoming the victims of black perpetrators. Under the guise of the wars on drugs, crime and now terror, the urban poor and disenfranchised, especially young black men, have been rounded up in mass numbers, largely for non-violent drug crimes, of which middle-class whites have been consistently shown to be equal perpetrators.

Meanwhile, even the most serious tele-

## Scandinavian Prison Model (cont.)

vision shows like *Law & Order* and *The Wire* present black criminals as overrepresented by unscrupulous defense lawyers – defending the “punks” that George Zimmerman believed “always get away with it.” And these trends have continued even though crime rates have been dropping since the early 90s, while only one in 40 criminal cases goes to jury trial and prosecutors bargain pleas by threatening suspects with the longest prison sentences in the industrialized world.

Decades of research show that incarceration and crime rates in the U.S. bear no fixed relationship. Between 1999 and 2009, for example, New York shrank its prison population by 20 percent while crime rates dropped by 29 percent; from 2000 to 2010, Indiana increased its prison population by 45 percent and reduced its crime rate by .08 percent. In the 1950s, Finland made the decision to lower its incarceration rates in line with Scandinavian norms; it shrank that rate by 75 percent across periods of both rising and stable crime. Prison size is not determined by crime rates but by what states decide to treat as crimes, how much punishment the public demands and, in

the U.S. today, how successful the prison industry is in fomenting that demand. And all of these factors are determined by whom voters imagine this punishment landing upon.

This peculiarly American institutionalization has created a nation where few middle-class white Americans can name anyone they know personally who has been sentenced to prison, and even fewer black Americans of any class cannot.

In 1993, Norwegian criminologist Nils Christie (a major influence on Scandinavian penal policy) had already unpacked this phenomenon. In *Crime Control as Industry*, Christie concluded that the more unlike oneself the imagined perpetrator of crime, the harsher the conditions one will agree to impose upon convicted criminals, and the greater the range of acts one will agree should be designated as crimes. More homogeneous nations institutionalize mercy, which is to say they attend more closely to the circumstances surrounding individual criminal acts. The opposite tendency, expressed in mandatory sentencing and indiscriminate “three strikes” laws, not only results from but widens social distance. The harshness of the punishment that fearful voters are convinced is the only thing that works on people who don’t think or act

like them becomes a measure of the moral distance between those voters and people identified as criminals.

Author Kenneth E. Hartman has lived inside California prisons for over three decades. In an essay in the forthcoming book, *Fourth City: Essays from the Prison in America*, he speaks to why that system sees 75 percent of all repeat parolees back within three years:

“Most prisoners are uneducated, riddled with unresolved traumas and ill-treated mental health problems, drug and alcohol addictions, and self-esteem issues far too often bordering on the pathological. The vast majority has never received competent health care, mental health care, drug treatment, education or even an opportunity to look at themselves as humans. Had any of these far less draconian interventions been tried ... no doubt many of my peers would be leading productive lives. We internalize the separation and removal, the assumed less-than status, and hold up the idiotic and vainglorious pride we pretend to, like clown’s make-up, to hide our shame. In the end, the vast majority of us become exactly who we are told we are: violent, irrational and incapable of conducting ourselves like conscious adults. It is a tragic opera with an obvious outcome. *Nothing else works* is not a statement of fact; it is the declaration of an ideology. This ideology holds that punishment, for the sake of the infliction of pain, is the logical response to all misbehavior. It is also a convenient cover story behind which powerful special interest groups hide.”

Though white, Hartman echoes the observations of the same Black Power prison writers of the 1960s and ‘70s, whose insights helped inspire white backlash:

### WHEN IT IS YOUR FAMILY’S FUTURE, EXPERIENCE MATTERS STATE AND FEDERAL POST-CONVICTION AND APPEALS

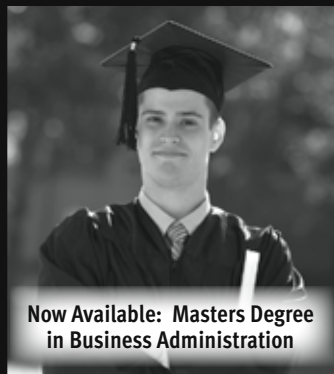
Licensed since 1995, hundreds of appellate briefs and habeas petitions,  
capital qualified for habeas and appeals in Texas and U.S. Southern District of Texas,  
Motions for New Trial, Rule 35 and 60b motions, re-sentencing and arrest of judgment.

Call or write the Law Offices of Patrick F. McCann, 713-223-3805.

909 Texas Ave, Ste 205, Houston, Texas 77002 • writlawyer@justice.com

**Serious financial inquiries only.**

## Earn an Adams State University Degree via Correspondence Courses



- Correspondence Courses via mail • No internet access required
- Degree options available — Associate of Arts or Science, Bachelors degrees in Business Administration, Government, History, Interdisciplinary Studies, Sociology, Paralegal Certificate Program, Masters degree in Business Administration
- Affordable tuition — \$165/semester hour for undergraduate correspondence courses, \$350/semester hour for Masters level correspondence courses  
Payment options include cashiers check, credit card, money order or verified personal check
- Accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools
- 16+ years of experience serving incarcerated students
- Veteran friendly
- FREE unofficial evaluation of previously earned credits



Call or write to receive additional  
information — 800-548-6679  
Adams State University  
Office of Extended Studies, Suite 3000  
208 Edgemont Blvd. Alamosa, CO 81101  
[www.adams.edu](http://www.adams.edu)

Convicted criminals bring to prison issues that devolve directly from poverty and poverty's traumatic fallout: broken and abusive homes, communities and schools; mental illness, alcoholism and addiction. Rather than remediating the effects of these issues, prisons tend to institutionalize them.

Those of us in the virtually prison-immune demographics also fail to credit convicted people with the simple capacity to see and understand where they are. No imprisoned American has to be told she has been left to the whims of under-screened and under-trained staff, most of whom are also from impoverished circumstances. They see staff rewarded with promotion for harsh treatment of prisoners and on the way to solid pensions. They know that it doesn't matter what potential for shame, for self-castigation, penitence or desire to make amends resides inside any American prisoner. Parole decisions are made by political appointees who watch the backs of their patrons. The system itself breeds cynical resentment. Witnessing the humiliation, racism and physical assault perpetrated against prisoners – by staff, or tolerated among prisoners – can overfill the

psychological space where reflection and self-searching might occur.

Now imagine yourself in a prison that commands a view from a tourist brochure. Your cell phone lies on a shelf, next to a TV and CD player, inside a prison that lets you go to paid work or study. There is no perimeter wall. Prison staff will help you with free-world social services to cover a missed month's rent on your family's apartment. Another will help you look for work, or for the next stage of education. Imagine yourself a prisoner who knows he is in prison for what he did, not because of his color or class, or because, lacking the resources for a proper defense, he plea-bargained under threat of near-geological years of incarceration.

But also imagine living on this lovely island knowing, every minute of every day, that this is *not* your home, these people are *not* your family, your friends, your children, and you are always one misstep from a cell in a closed prison. You have strict curfews. In town you wear an electronic anklet. Yet nothing here feels unfair or unreasonable. You have, after all, committed a crime serious enough to make a range of other

remedies untenable. Nothing you can see or touch or smell or taste, and no interaction with staff, gives you anything to blame or resent about the system that brought you here.

This is the polished glass nightmare. Every emotional discomfort, every moment of remorse that you might try to cover with resentment of the system, everything you try to grip onto to crawl away from personal responsibility slides back into the pit of the self. Judges and prosecutors are unelected professionals who are under political pressure only to *minimize* prison populations. The message everywhere you look and walk is the same: *You did this to yourself*. You sit in a university classroom, but you harbor a secret. You are not like the others. On the way to work, you walk along a lovely sea wall, among kids and adults on holiday, but you know you are not free. You look like them; they never raise an eyebrow at you. But *you* know. You are under quarantine, and the disease is the past you made for yourself.

Everything is being done to help and prepare you to clear this secret and live again like others. But the weight, finally,



## *Gold Star Fragrances*

4 West 37th St

New York, New York 10018

Tel. 212.279.4474; Tel. 212.279.4470

Fax. 212.279.4471

email: [gstarfragrances@gmail.com](mailto:gstarfragrances@gmail.com)

website: [goldstarfragrances.com](http://goldstarfragrances.com)

We are the original distributor and importer of the finest perfume oils.

We carry over 1000 of the original and best perfume oils, soaps, incenses, body lotions, shower gels, body massage, bottles and more.

All of our oils are shipped in plastic bottles.

Catering to correctional facilities since 1976.



## Scandinavian Prison Model (cont.)

rests with you. This truly existential weight is implicit in the principle of normality, which is practiced throughout Scandinavian prisons: "The punishment is the restriction of liberty; no other rights have been removed," reads a fact sheet on criminal services in Norway. "During the serving of a sentence, life inside will resemble life outside as much as possible. You need a reason to deny a sentenced offender his rights, not to grant them. Progression through a sentence should be aimed as much as possible at returning to the community. The more closed a system is, the harder it will be to return to freedom."

One has to wonder if 10 years in such a glass funnel, directing all shame, anger and recrimination back onto oneself, is not a morally harsher sentence than twice that time inside a 24-hour war zone where some of the most powerful warriors wear state uniforms, where family visits are made into scenes of collective humiliation and where the few rehabilitative programs are run either by other prisoners or by unionized staff

who suffer even less scrutiny than guards.

Inside U.S. prisons, decades can be filled with the labor of simple survival. Reflection upon the decisions that brought anyone to confinement must overcome the bitterness evoked by a system that sustains such an environment.

...

I MET ERIK IN A DANISH OPEN PRISON where he was finishing a 10-year sentence for a drug-related murder. He began addiction treatment and work toward his public-school diploma while awaiting the appeal of his case. He continued his studies while serving two years in a closed prison. The open prison of Søbysøgård occupies an old manor farm amid rolling hills laced with suburban streets and alcoves. Buildings erected in the 17th century house administrative offices and classrooms with carved moldings, fireplaces and towering windows. There is no perimeter wall and no fences. Prisoners work in a small dairy, or in three greenhouses raising organic herbs, zucchini and cucumbers. Having done well in school (his English is excellent), Erik is allowed to study full-time for his university degree.

He wants to earn a master's, "To give me a better chance of getting a job, with a prison record." (His record will be cleared after five years if he works in the private sector; after ten years if he works in the public sector).

Erik's room is about 8 by 12 feet, with a TV, computer (to facilitate on-line study on strictly limited sites), sound system and a cell phone he can use to call home or get calls at any time. When I visited, he stressed the importance of the phone for keeping in contact with family, to sustain emotional ties, as well as "to vent and to heal." One wall is covered with pictures of himself as a younger man with his girlfriend. The housing unit has a clean, bright communal kitchen. Men cook together in order to save money. A bus takes them to a grocery where local citizens wait outside while the men shop.

Edvin, the director of education, is a tall man who dresses like a farmer and sits by quietly while I speak with Erik and two other men, who together represent the racial demographics in Scandinavian prisons as a whole: two are white natives and the third is a foreign-born man of color. In Edvin's presence they are openly critical of the life inside closed prisons. All express thanks



**\$9.95**  
per month

**\*UNLIMITED JAIL CALLS\***  
"WE BEAT ALL OUR COMPETITORS"

**SWITCH TO US TODAY!!**

No Contracts  
No Credit Checks  
No Equipment to buy

**LOWER THE CALL RATES FOR:**

- GLOBAL TEL LINK
- SECURUS
- V-CONNECT
- PAYTEL
- ICSOLUTIONS
- VAC
- PLUS MORE

**FEDERAL \* STATE \* COUNTY**

SAME DAY ACTIVATION - NO PER MINUTE CHARGES ON OUR END. JUST \$9.95 A MONTH!

**GET A LOCAL NUMBER TODAY**  
888-776-2012

**www.JailCallsUSA.com**

Online Payments Accepted   

**ORDER THE NEW PRISON OFFICIAL CATALOG - ONLY \$10**

**PRISON OFFICIAL**  
www.prisonofficial.com

**ISSUE#1 OR ISSUE#2**  
\$ FREE HOT MODEL PHOTOS INCLUDED WITH PURCHASE!

**INMATES #1 RECOMMENDED**

**CORRECTIONAL FACILITY APPROVED**

**GET MAIL**  **DONT DELAY**

**ORDER THE NEW PEN PAL LIST OF 50 REAL ADDRESSES TO FEMALES WAITING TO CORRESPOND TO PRISONERS**

**RECENT PHOTOS INCLUDED!**  
**SEND \$49.95**



Inmates post your profile on our Pen Pal website  
**www.PrisonOfficial.com**  
2 year membership - Send \$30  
250 word limit send S.A.S.E for return of your photo

**Send Facility Checks/Money Orders To:**  
**PRISON OFFICIAL**  
**P.O. BOX 1427**  
**WARRENVILLE IL 60555**

**MUST ADD \$2 S/H TO ALL ORDERS**

that they are not in one, let alone in the American prisons they have seen on TV. On the last walk from the dairy down the gravel driveway, I learn why they trust Edwin. He's concerned about plans to build a closed prison adjacent to Søbysøgård. At the end of the drive, he stops and faces me.

"I worry that we will ruin the spirit of Søbysøgård."

He's described that spirit throughout our tour: sober work and study, supportive community and active reintegration into life outside. An officer that I spoke to expressed a similar sentiment. He'd served in a closed prison, and did not want to go back.

But it was inside Erik's cell that dread lifted my neck hairs at the thought of serving time in such a place. A breeze touched the leaves of the maple tree outside his window. Then it curled the corners of the pictures tacked and taped to the wall: Erik in a tux beside his silver-tiara-ed girl; he and friends on a beach with his dog, a dopey-looking setter. Prisoners develop a sixth sense for the moods of others. It's a required skill for anyone who has lived with people who suffer emotional and mental disorders that can turn violent. He sensed

that something was up. I looked at him.

"I did this to myself," he said.

I did not know what to say. I said, "I'm sorry."

"Not as sorry as I am."

...

JEREMY HAS BEEN IN MY MAXIMUM-security writing workshop for three years. He's serving 22 years to life. He has difficulty getting to the class due to conflicts with religious practice and guards who seem to enjoy picking on him because he's Puerto Rican, Muslim, physically slight (about 5'5" and 140 pounds), and a law-library clerk (thus standing just above child molesters among guards' favorite targets). His major project has been a long essay about his crime. He was raised by an abusive stepfather who once held a gun to his head and threatened to kill him. On the street, he was harassed by a neighborhood bully. The bully was strong and tough but, unlike Jeremy, unpopular with girls. The bully once broke Jeremy's arm so badly that a steel plate now holds it together. Without a place of retreat either inside or outside his home, Jeremy decided to kill himself. He took his father's

gun. He was high, but needed to get higher to work up his courage, when he ran into the bully outside a liquor store and shot him. Jeremy was 17.

He's mindful of actions he might have taken: moving in with his sister, seeking outside help, even getting control of his popularity with girls. With a merely competent lawyer his story might have played well with a jury, but he had no money for a real defense. He didn't deny that he'd killed. He took a plea bargain from a DA who threatened what prisoners call a "lights out" stretch of years, used to scare suspects into saving the state the time and costs of a jury trial.

I have listened to men complain about their cases, their do-nothing lawyers, about racism. Jeremy does not complain. He's a self-effacing young man. But I wonder what he'll be by his first parole hearing at age 40. He can feel no more profound regret than he does already for the family of the young man he killed. He can feel no deeper remorse for his actions. Yet for another 18 years he will endure counselors (many of them former guards) who do little more than keep prisoner files in order. He will

## Stamps for CASH!

*Great Goods will buy your stamps!*

**70%** of Face Value: Complete books or sheets of Forever Stamps

**65%** of Face Value: Complete books, sheets, or rolls of 45-cent stamps

**60%** of Face Value: Complete books or sheets of high denomination stamps above 45-cent

**Payment sent within 24 hours of receipt.**

**W**E WILL SEND your funds as a money order, electronic payment to anywhere you designate. Great Goods can also send payment to an approved package vendor. Please provide complete name and address of where to send your funds. Also include any required forms or special instructions.

Minimum money order of \$20. • No quantity of stamps too big. • No taped or stapled stamps. • Used, damaged, torn stamps not accepted and cannot be returned. • Stamps MUST be on original postal backing. • Only new stamps accepted.

• No singles or partials will be accepted and they cannot be returned.

## GREAT GOODS

PO Box 399, West Chesterfield NH 03466

[www.greatgoods.org](http://www.greatgoods.org)

STAMPS © USPS. ALL RIGHTS RESERVED.



## Scandinavian Prison Model (cont.)

continue the daily work of self-protection from men in need of mental health and addiction care. He'll continue to do white-collar work for wages that can be counted in dimes and pennies. He'll talk with his sister from a phone in the yard, impatient men waiting behind him, at sky-high rates charged only to prisoners. And for 18 years he'll negotiate the moods of correctional officers who find in him enjoyable sport. Jeremy is no longer the scared kid who pulled a trigger. He has said, in many ways, "I did this to myself." But by the time he leaves he may be too far removed from that kid, across decades among violently desperate men and staff whose simplistic refrain stretches nationwide: "If you can't do the time, you shouldn't have done the crime."

If Jeremy seems too much the poster child for more merciful prisons, consider Jake: white and sent by his mother's hard work to private schools, Jake became enamored of the mystique around organized crime. He killed his crime partner, as he admits now, in large part to complete his street cred as a gangster. Jake, too, takes the full weight for his crime. He was young and stupid. He believed that the man he killed had already gotten away with murder. This was all part of a self-credentialing plan. He went to trial with a legendary defense lawyer, and lost. He carries the lights-out years

that Jeremy bargained out of. And every night that we sit discussing his essays about his crime, his regrets or his research into theories of criminal deterrence, I can see and hear him continue an internal wrestling match. The self-loathing that wells up from thinking about the destructive arrogance of his crime grapples with resentment at the destructive stupidity of the prison system.

I've heard older men describe how they came in cocky, then grew into shame and remorse. Yet their regret is regularly overshadowed by anger against the arbitrary overshadowed by anger against the arbitrary suffering that the prison perpetrates. These older, wiser men, like Kenneth Hartman, know this is the toughest challenge inside. The chaos of the life that put them in prison eventually evolves into the self-understanding that comes with age and assuming the weight of their crimes. But then begins the daily labor of denying the prison its power to turn them into the animals it sees in condemned people. As Rutgers University professor of education Benjamin Justice and Yale Law School professor Tracey Meares observe, the overt curriculum of the system is about fairness, due process and protection of law-abiding citizens. But for the objects of policing and punishment, "the American criminal justice system offers ... race- and class-based lessons on who is a citizen deserving of fairness and justice and who constitutes a group of dangerous others deserving of severe punishment, monitoring and virtual branding."

For a forthcoming book and digital archive, over the past four years I have been soliciting, reading and editing non-fiction essays by incarcerated Americans writing about their experience inside – essays from over half the states by black, white, Latina/o, Native American, and Asian and Pacific Island prisoners; by men, women and gender-variant prisoners; by first-timers and by people who were first locked up when Lyndon Johnson was president. Though many praise individuals who have helped them inside, not one essay among several hundred expresses the belief that the system exists at its current scale for any other reason than the tax-funded profits and jobs it provides.

Beatings and purely arbitrary punishment are the norm. Health care is poor when it is not dangerous. In many facilities, programs for addicts and alcoholics (who make up 85 percent of those convicted of violent crimes) are so inadequate that the names on waiting lists today will wait decades for

help. And no matter the race of the writer, the racism within the system is assumed if not explicitly criticized. What political prisoner, reformer and eventual California prison administrator Kate Richards O'Hare wrote in her book *In Prison* in 1923 remains true today: "... by the workings of the prison system society commits every crime against the criminal that the criminal is charged with committing against society."

Scandinavian prisons are roughly as racially and ethnically homogeneous as American prisons: 70 percent of Nordic prisoners are ethnically white citizens; the other 30 percent are foreign-born (mostly from other EU countries). In U.S. prisons, ethnic and racial minorities make up over 60 percent of the population. The difference is that the majority of Scandinavian prisoners look like the majority – including the voting majority – outside. Laws, enforcement policies and prison practices are those that the majority of citizens assume would work for themselves. Whatever other differences may exist between law-abiding people and those convicted of crimes, the prison system itself does not seek to widen the social distance between them.

Though anti-immigrant racism has been on the rise in Europe for years, when its most egregious incident occurred in Norway – the massacre of 69 citizens, including many children – the nation's response was a deeper embrace of tolerance. (Roses became the symbol of this tolerance. Import tariffs on roses were dropped so that all Norwegians could contribute to spontaneous memorials). In this rare case, the killer will likely never see the free world again. But his suffering is and will continue to be his own.

In 1832, Alexis de Tocqueville and Gustave de Beaumont came to America to study its prisons. They concluded their report with a warning: "... guard against extremes, and do not let the zeal with which you advocate certain means obscure the object sought to be obtained by them."

*This article was originally published in The Atlantic ([www.theatlantic.com](http://www.theatlantic.com)) on September 24, 2013 as "Why Scandinavian Prisons Are Superior"; it is reprinted by permission of the author, who is a professor of English at Hamilton College and editor of the forthcoming book, *Fourth City: Essays from the Prison in America* (Michigan State University Press, March 2014).*

**PENACON.COM**

Helping the incarcerated community gain connections around the world!

Post your profile on an easy to navigate website for millions of viewers to see. Gain new penpals and look forward to receiving mail!

One Year Ad Only \$35  
Until Release Date Ad \$95

Request a form today!  
Send a S.A.S.E. to:  
Penacon.com  
P.O. Box 1037  
Edna, TX 77957

USE CODE  
PLNSOFF  
FOR \$5 OFF



# Sweden's Shrinking Prison Population

by Christopher Zoukis

**S**WEDEN'S PRISON POPULATION HAS seen such a sharp drop in recent years that the nation's prison service announced in November 2013 that it had closed four correctional facilities and a remand center.

Prisons in Aby, Haja, Batshagen and Kristianstad were closed in 2013; two will likely be sold and the others transferred to other government agencies for temporary use. "We have seen an out-of-the-ordinary decline in the number of inmates," said Nils Oberg, head of Sweden's prison and probation services. "Now we have the opportunity to close down a part of our infrastructure that we don't need at this point in time."

Sweden's prison population has been dropping by around one percent per year since 2004, but declined six percent between 2011 and 2012. Oberg stated that he expects to see another six percent drop during 2013 and in 2014.

He said no one knows for sure why Sweden's prison population has dropped so sharply. "We certainly hope that the efforts we invest in rehabilitation and preventing relapse of crime has had an impact, but we don't think this could explain the entire drop of six percent."

One contributing factor may be related to a 2011 decision by the Swedish Supreme Court that resulted in more lenient sentences for drug offenders. There were about

200 fewer people serving prison terms for drug crimes as of March 2013 than a year before.

Hans von Hofer, a criminology professor at Stockholm University, believes that a recent shift in sentencing policy is a significant factor. Sweden has replaced short prison sentences with probationary sanctions for many minor offenses such as thefts and drug crimes. Of the fall in Sweden's prison population between 2004 and 2013, 36 percent was related to theft, 25 percent to drug offenses and 12 percent to violent crime.

The nation's prison population has decreased by nearly a sixth since peaking in 2004 at 5,722. In 2012, 4,852 people were imprisoned in Sweden, which has a population of 9.5 million – a rate of 51 per 100,000 citizens.

Sweden ranks 112th in the world for prison populations. The United States is the leader, with a prison and jail population of approximately 2.2 million – an incarceration rate of 716 per 100,000. China, whose human rights record is often decried by U.S. politicians, ranks second with 1.64 million people behind bars – but its rate is only 121 per 100,000 population.

In an opinion piece in the *DN* newspaper, prison chief Oberg said Sweden should work even harder on rehabilitating prisoners and needs to do more to help

them once they return to society. Released prisoners on probation can receive treatment for substance abuse addictions and issues related to violence, and around 4,500 volunteers provide mentoring and support for former offenders.

"This year and next year the priority of our work will be with young offenders and men with convictions of violent behavior," said Kenneth Gustafsson, the governor of Sweden's Kumla prison. "For many years we have been running programs to help those addicted to drugs. Now we are also developing programs to address behaviors such as aggression and violence. These are the important things for our society when these people are released."

"In Sweden we believe very much in the concept of rehabilitation, without being naive of course," he added. "There are some people who will not or cannot change. But in my experience the majority of prisoners want to change and we must do what we can to help to facilitate that. It is not always possible to achieve this in one prison sentence. Also it is not just prison that can rehabilitate – it is often a combined process involving probation and greater society. We can give education and training, but when they leave prison these people need housing and jobs."

Sources: [www.theguardian.com](http://www.theguardian.com), [www.dawn.com](http://www.dawn.com)

## CALIFORNIA LIFER NEWSLETTER

**CLN:** A comprehensive newsletter mailed every 6-8 weeks. State and federal cases, parole board news, statistics, legislation and articles on prison, parole and correctional issues of interest to inmates and their families.

**CLN** also provides services such as copying and forwarding federal and state cases, articles and news and materials available on the Internet.

**SUBSCRIPTIONS:** Prisoners: \$25 (or 80 stamps) per year (6 issues minimum). Free persons: \$90.

**CLN, PO Box 277, Rancho Cordova, CA 95741**

## Incarcerated Entrepreneur Freight Agent Training Course 12 Module Training course takes you

through everything you will need to graduate and be a certified freight agent moving freight for commission.

**Toll Free 1-877-238-9185**

**S.A.S.E. For more information To:**

**Lone Wolf Institute**

**1015 Townsend Dr. Pocahtontas, AR 72455**

**Payment plans available from \$25.00**

**[lonewolfarkansas@gmail.com](mailto:lonewolfarkansas@gmail.com)**



## From the Editor

by Paul Wright

**W**ELCOME TO THE FIRST ISSUE OF *PLN* for 2014. If you have not donated to our annual fundraiser, please do so now; it is not too late and we need your support to continue our advocacy work on issues like the Campaign for Prison Phone Justice, for which we do not get foundation funding.

Former political prisoner Nelson Mandela, who spent 27 years behind bars for seeking to overthrow the racist apartheid regime in South Africa, died on December 5, 2013 and has been eulogized extensively. Ironically, many of those now singing his praises were less than helpful when he was incarcerated on Robben Island. President Obama attended Mandela's funeral, yet for decades the U.S. supported the South African apartheid government. And, of course, the CIA was instrumental in helping the South African secret police – the Bureau of State Security (BOSS) – capture Mandela in the first place. Amnesty International mourned his death, yet Amnesty never recognized Mandela as a prisoner of conscience during his 27 years of captivity because he supported armed struggle against apartheid.

In ending apartheid in 1993, the South African ruling class gave up a little but kept a lot. Although apartheid was dismantled, the lives of the poorest South Africans did not change much. As an article in this issue of *PLN* by former U.S. political pris-


oner James Kilgore notes, there were fewer people held in South African prisons under apartheid than are currently incarcerated now: "According to the International Centre for Prison Studies, in 1992 – near the end of apartheid – South Africa had 104,790 prisoners and an incarceration rate of 285 per 100,000 population. As of August 2013 the nation had 156,370 prisoners at a rate of 294 per 100,000 population." Such is the cost of democracy and freedom.

When the South African police murdered 34 striking miners on August 16, 2012, it was under the auspices of Mandela's African National Congress (ANC); accordingly, the massacre met with little protest locally or internationally. I was in prison in the 1980s when a delegation of South African bankers returned from meeting with ANC representatives and one of them told a reporter, "We can do business with the ANC." After that, I concluded the days of apartheid were numbered. South African capitalism is stronger than ever thanks to Mandela, just as poor South Africans are poorer, more repressed and incarcerated than ever.

But this is what modern-day regime change looks like. While Mandela was roundly lauded upon his death, those not so fortunate, like Steve Biko, did not even get the luxury of a prison cell. Biko was beaten to death in September 1977 by members of BOSS. Today, political prisoners like

Abimael Guzmán languish in solitary confinement in Peru after 21 years in captivity for leading a national liberation movement. In the United States, political prisoners like Mutulu Shakur, Herman Bell and Jalil Muntaqim, among many others, have been held in prison for decades after being convicted of armed struggle against the U.S. government. If President Obama were that concerned about political prisoners he could free some of the ones held in federal prisons, starting with Leonard Peltier, Oscar Lopez Rivera and those confined in the Guantanamo Bay military concentration camp in Cuba.

This month's cover story on Scandinavian prisons serves as a reminder that the U.S. police state and retributive criminal justice system are not the only models of social control. While there are undoubtedly prisons in other parts of the world that are "worse" than those in the United States, it is worth noting that as a general rule it is not a deliberate government policy in such countries to treat people poorly and cruelly as part of a punitive system, whereas the U.S. spends billions of dollars to do just that. No other nation imprisons as many people for so long as we do in America, the land of the not-so-free with liberty and justice for some – mainly those who can afford it.

Enjoy this issue of *PLN* and please encourage others to subscribe. 



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription! Quarterly drawing WINS \$100! (Void in New York) (Last Quarter's winner from Airway Heights, WA.)

**TELL YOUR FRIENDS! ACT NOW!!**

**PO Box 2063 • Fort Walton Beach FL. 32549**  
**[www.InmateMagazineService.com](http://www.InmateMagazineService.com)**

## Inmate Magazine Service





# PLN FUNDRAISER 2013



*Please Support Prison Legal News  
and the  
Human Rights Defense Center!*



Prison Legal News, a project of the non-profit Human Rights Defense Center, cannot fund its operations through subscriptions and book sales alone. We rely on donations from our readers and supporters like you!

PLN conducts one fundraiser a year; we don't bombard our readers with donation requests, only ask that if you are able to contribute something to our important work, please do so. Every dollar counts and is greatly appreciated and will be put to good use. No donation is too small, even books of stamps!

**Where does your donation go? Here's some of what we've done in the past year:**

- HRDC, a co-founder and coordinator of the Campaign for Prison Phone Justice, was instrumental in urging the Federal Communications Commission to reduce the cost of prison phone calls, which the FCC did on August 9, 2013 when it capped interstate prison phone rates nationwide!
- PLN/HRDC received the First Amendment Award from the Society of Professional Journalists on August 26, 2013 – a prestigious honor!
- PLN obtained the first-ever ruling on the merits striking down a jail policy that restricted prisoners from receiving any mail other than postcards, in *PLN v. Columbia County, Oregon*.
- PLN filed censorship suits against the Nevada DOC and jails in Comal and Upshur Counties in Texas; Virginia Beach, Virginia; and Kenosha, Wisconsin. We have other censorship and public records suits pending nationwide, including against Corrections Corporation of America.

**With your help we can do more! Please send your donation to:**

**Prison Legal News, P.O. Box 1151, Lake Worth, FL 33460**

Or call PLN's office at 561-360-2523 and use your credit card to donate.

Or visit PLN's website at [www.prisonlegalnews.org](http://www.prisonlegalnews.org) and click on the "Donations" link.

## PLN Support Gifts

### Gift option 1

As a token of our gratitude for your support, we are providing the PLN card when making a donation of \$50. The card is hand



embroidered by women prisoners in Bolivia who are paid a fair wage for the cards to help support their families.

### Gift option 2

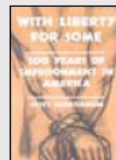
In recognition of your support, we are providing the PLN hemp tote bag when making a donation of at least \$75. Handmade in Vermont using hemp fiber. Carry books



and groceries stylishly and help end the war on drugs!

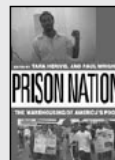
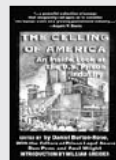
### Gift option 3

To show our appreciation for your support, we are providing the following selection of books for you to choose from when making a donation of \$100. Donations of \$100 or more can choose one free title. Each \$100 donation entitles you to another free title; i.e., donate \$500 and you get five books! \$1,000 and you get everything on the page! Please circle the books you want and send the corresponding donation amount.



### Gift option 4

As a thank you gift for your support, we are providing the entire PLN anthology of critically acclaimed books on mass imprisonment signed by editor Paul Wright! (The Celling of Amercia, Prison Nation and Prison Profiteers) plus the PLN hemp tote bag to carry the books in when making a donation of \$250 or more.



# Mangaung and Beyond: Private Prison Exemplifies South Africa's Criminal Justice Woes

by James Kilgore

IN RECENT MONTHS A BATTLE HAS erupted at Mangaung prison in South Africa. Mangaung, located near the city of Bloemfontein, is one of the country's two privately-operated correctional facilities. Managed by British-based G4S, which bills itself as the "world's largest security" company, Mangaung reflects a troubled criminal justice system littered with overcrowded, poorly resourced prisons. A September 2013 strike by guards from the Police and Prison Civil Rights Union (POPCRU) sparked the latest round of drama; the guards were protesting the dismissal of several shop stewards as well as poor working conditions. G4S responded by firing 300 prison staff.

In early October 2013, with the facility still reeling from the mass terminations, a female guard was held hostage for twelve hours. The next day another guard was stabbed. Speaking for G4S, company spokesman Andy Baker alleged that prisoners were being paid to destabilize Mangaung. "We assume it is linked to ongoing staffing strife," he told the media, implying the union was behind the attacks.

At that point, Minister of Correctional Services Sbu Ndebele stepped in and placed Mangaung under the direct supervision of the state, essentially terminating G4S's 25-year contract with the South African government signed in 2000. Ndebele claimed G4S management had lost "effective control over the prison." The move reflected a broader rejection of private prisons by the South African government:

Ndebele's predecessor, Nosiviwe Mapisa-Nqakula, had blocked the implementation of a bidding process for four more private prisons in 2011. As it presently stands, the country's only privately-operated facility is Kutama Sinthumule in Limpopo province, co-owned by Kensani Corrections (Pty) Ltd. and the Florida-based GEO Group.

## Scandal – Nothing New for G4S

FOR MANY, THE EVENTS AT THE NEARLY 3,000-bed Mangaung prison are not surprising. Scandal is nothing new to G4S. The company grabbed global headlines when it failed to hire enough personnel to fulfill its £284 million contract to provide security for the 2012 Summer Olympics in London. More recently, British authorities have launched an investigation into the firm for allegedly overcharging the government for electronic monitoring services, including collecting fees for ankle monitors on people who were dead, and for allegedly altering official documents to facilitate the deportation of an asylum seeker.

POPCRU members welcomed Ndebele's takeover of Mangaung. According to a public statement issued by the union, "the incidents in Mangaung are an indication that privatization ... will never work." The union decried what it called a "wastage of public funds which could be invested in other critical programs."

While privatization remains a key issue, especially in regard to labor practices, G4S guards and other prison staff appear

to have played crucial roles in the violence at Mangaung. Last year, a Johannesburg-based think tank, the Wits Justice Project, reported widespread patterns of staff abuse of prisoners. The researchers focused on members of the facility's Emergency Security Team (EST), also known as "Zulus" or "ninjas."

Thabo Godfrey Botsane, who served six years in Mangaung, spoke to the Wits researchers. He claimed the EST paid him a visit one night in his cell and ordered him to strip naked. "When I refused," he said, "they threw all my belongings out of the window. They doused me with water and shower gel and then started to kick and electroshock me with their shields. I was injured and bleeding after this assault."

Themba Tom worked at Mangaung from 2000 to 2008. He verified Botsane's account, stating that there was a place they called "the dark room because EST members would bring inmates there, strip them naked, pour water over them and electroshock them. We would try not to hear the crying and screaming. It was awful."

Apart from the use of electroshock, the Wits Justice Project also reported a pattern of forced medication of prisoners by EST members, typically involving powerful psychotropic drugs. Researchers obtained a video taken by prison staff that showed a team of guards holding down a prisoner named Bheki Dlamini while they reportedly gave him an antipsychotic drug called Etomine, which has serious side effects.



## CASH FOR YOUR STAMPS P. O. Box 687-P, Walnut, Ca. 91788



Get the HIGHEST return for ALL of your stamps!

Rapid processing and payment sent to your designee (No Package, Book, or Magazine Vendors Please)

**70% OF FACE VALUE** for Books and Sheets of "Forever" Stamps in new or excellent.\*

**60% OF FACE VALUE** for Books and Sheets of Other Denominations in new or excellent condition.\*

**50% OF FACE VALUE** for all books, sheets, or rolls that are not in new and complete condition.

**\*NEW CONDITION MEANS NO FOLDS, NO WRITING, AND ALL STICKERS IN TACT.**

**NO SINGLE STAMPS (GROUPS OF 2 OR MORE).** Stamped envelopes must be #10 with no markings.

**\$15.00 Min. Money Orders. Damaged or Taped Stamps Not Accepted/Returned. Send SASE for Brochure.**

The film apparently shows Dlamini repeatedly screaming, “no, no, no” and telling the guards, “I am not a donkey, I am not an animal.” The researchers said Dlamini is not psychotic or schizophrenic but was reportedly being punished for complaining about Vienna sausages served for dinner.

### Beyond Mangaung

ULTIMATELY, THE CONFLICT IN MANGAUNG is part of a larger struggle to reform criminal justice in South Africa. This process has drifted far from the ideals of reconciliation and restorative justice that inspired the movement to democracy which swept Nelson Mandela into power in 1994. Over the past decade-and-a-half, South Africa has carried out a program of U.S.-style mass incarceration, adopting policies like mandatory minimum sentences and zero tolerance.

According to the International Centre for Prison Studies, in 1992 – near the end of apartheid – South Africa had 104,790 prisoners and an incarceration rate of 285 per 100,000 population. As of August 2013 the nation had 156,370 prisoners at a rate of 294 per 100,000 population. Moreover, the number of prisoners serving life sentences has soared from 400 in 1995 to nearly 11,000 today.

Ndebele has called for a major rethinking of South Africa’s overall approach to incarceration. “It is quite shameful for a democratic country to have so many people in prison,” he told a South African Broadcasting Company reporter, “and we need to reduce that while not letting people get away with crime.”

His immediate plan to decarcerate includes an initiative to release 11,000 people from prison and place them on electronic monitoring. Ndebele has also proposed a number of programs that are unprecedented in South African prisons, ranging from compulsory Adult Basic Education classes to employing prisoners to perform labor for the state at less than minimum wage. In a 2012 interview, he cited school construction as one example of the type of work prisoners could do.

While Ndebele has taken important steps by sidelining G4S, launching an early release program and promoting rehabilitation, he has a difficult task in convincing fellow politicians and the voting public as to the need to soften South Africa’s stance on punishment. Certain realities work against

his aspirations. For example, the country has an extremely high violent crime rate, with the 2012 murder rate being about six times that of the U.S. Lingering social inequities also present serious obstacles, including a national unemployment rate of 25.6% and, according to a recent Oxfam report, the highest level of income inequality on earth.

Although the Minister of Correctional Services may be getting a grip on the situation involving Mangaung and G4S, tackling the broader transformation of criminal

justice in South Africa will require much more time and a considerable change in both public policy and the public’s mindset to yield lasting results. ■

*James Kilgore is a researcher, writer and social justice activist in Champaign, IL. He spent six weeks in a South African prison in 2002 before completing six-and-a-half years in U.S. prisons. He writes frequently on criminal justice issues, has published three novels and provided this article exclusively for PLN. He can be contacted at [waazn1@gmail.com](mailto:waazn1@gmail.com).*

## LET US HELP GET YOU HOME!

D&D Worldwide Services LLC, is an Inmate Service Provider. We create parole plans and provide parole plan documentation services worldwide. We are a team of Christian Professional Consultants with over 14 years experience with the prison system. Our services are intended to guide Pro-Se Clients in the “Right Direction” while assisting them during the parole review process.

We focus on showing the Parole Board a Real Person, the Positive Outcome of Incarceration, and we focus on showing you to be a Favorable Candidate for Parole!

### We offer two service options:

#### Full Service (Texas Only) & Standard Service (Worldwide)

**Full Service** – Our office will collaborate the details, gather all the essential documents, create into a detailed personalized parole plan, and provide updates of the major occurrences of the file. Services are provided UNTIL an approval is granted or you are released from prison. Service fee is \$600.00.

**Standard Service** – Our office will verify your supporters, build your support system, and create into a personalized standard parole plan. Our standard parole plan is approved in ALL STATES where parole is available. Send SASE for a processing form. Service fee is \$125.00.

*Although the Prison system may only see Prison Numbers...*

*We see “Faces” with “Names” with “Loving families” – “We See People”!*

### D&D Worldwide Services, LLC

12337 Jones Rd # 408 Houston, TX 77070

P.O. Box 40081; Houston, TX 77240

Office: (281) 580-8844

Website: [www.myparole.info](http://www.myparole.info)

***Se Habla Español.***

# Hidden Agenda Fuels Challenge to Pivotal Death Penalty Case

by David Protes

**A**NTHONY PORTER, THE EXONERATED death row prisoner whose jubilant release from prison in February 1999 was the catalyst for abolishing the death penalty in Illinois, is back in the news after living in relative obscurity for years. A lot has happened since reporters covered Porter's first steps to freedom, but brace yourself for who's behind his sudden return to the front page. Hint: it has less to do with the evidence than it does a reality TV show producer and a lawyer with ties to City Hall.

Our story traces to September 1998, when Porter came within 50 hours of execution before getting a stay. Months later, he was freed when the case against him crumbled. Witnesses recanted and an eyewitness swore she saw her estranged husband, Alstory Simon, commit the double murder that had landed Porter on death row. Simon soon confessed on videotape to a private investigator working with a team I led at Northwestern University.

Besides the overwhelming proof of Simon's guilt – the videotaped confession, his guilty plea to a judge, a tearful courtroom apology for the slayings, damning admissions to a Milwaukee TV reporter – it was Simon's failure to appeal that forever closed his case.

And yet, as has been widely reported, lawyers James Sotos and Terry Ekl rant that Simon is actually innocent and Porter guilty. The lawyers convinced State's Attorney Anita Alvarez to take a third look at the case, arguably making the matter newsworthy. I challenged the lawyers'

claims and chastised the *Chicago Tribune* for an editorial that gave them credence. I also pointed out the dubious pedigrees of Sotos and Ekl, showing them to be shills for law enforcement whose likely purpose was to undermine the innocence movement by gutting its symbol.

Still, I wondered whether there was more to this story, curious about why the allegations erupted now when they were originally raised seven years ago – only to be shot down by every judge. Sure enough, a little digging shows that Porter has been dragged back into the spotlight for a more sinister reason. The motive is money.

Today, we look behind the curtain at two shadowy figures who have mounted the next phase of the assault on the truth. They have contrasting backgrounds, but a distinctly common purpose: Selling "Porter" – a made-for-TV movie about the case.

Christopher S. Rech, 48, runs a Cleveland-based production company, Pinpoint Media. Founded in 2009, Rech's outfit produces the popular "Crime Stoppers," a reality TV show that Rech describes as "an idea for catching bad guys... a local 'Americas [sic] Most Wanted' type program to generate leads that law enforcement can follow."

But Rech's latest project is "Porter," a documentary he expects to finish shooting in December 2013 and hopes to sell to cable TV by February. The recently-released trailer contains dramatic stuff, especially when Chicago attorney Andrew M. Hale proclaims this about the evidence that freed Porter from death row: "It was all one big lie."

Wait a minute. Andrew Hale? The go-to guy when Chicago's Law Department needs an outside lawyer to fight civil rights suits?

Yes, that guy. Between 2004 and 2012, City Hall paid \$20.5 million to Hale and the other lawyers he's worked with to defend the City against dozens of police brutality and wrongful conviction lawsuits, according to an analysis of public records. About a quarter of the money was paid to fight claims by African-Americans who alleged they were tortured by disgraced Chicago police commander Jon Burge and his "Midnight Crew."

The conduct of the 51-year-old Hale and his firm was called into question by federal judges in eight cases during the same period, according to court filings. In one of those cases, Judge Matthew F. Kennelly found that Hale and his co-counsel made a "racially motivated" attempt to keep an African-American woman from being seated as a juror in a wrongful conviction lawsuit. Judge Ruben Castillo called Hale's behavior "unethical" while defending a police torture lawsuit brought by an 80-year-old South Side resident.

So what is Andrew Hale doing in a documentary about Anthony Porter?

It turns out Hale is a budding TV star whose sound bytes Rech featured three times in the trailer. But even more important, Hale is credited as the executive producer of the project.

Wondering what an "executive producer" does, I asked Hollywood director and producer Seth Gordon, whose films

## Pen Pals for Prisoners

Your ad on the Internet worldwide:

One year for \$9.95. Mail name &

address for FREE order form or online:

[www.PrisonerPal.com](http://www.PrisonerPal.com)

PO Box 19689

Houston, TX 77224



[chiang-lin.com](http://chiang-lin.com)

Law Office of

**TIMOTHY C. CHIANG-LIN, PLLC**

Representing Individuals Sexually Abused  
in Washington State's Foster Care, Group Home,  
City, County Jail and Prison

**2155 112th Ave NE, Bellevue, WA 98004**

**[tim@chiang-lin.com](mailto:tim@chiang-lin.com)**



include the Oscar-winning documentary “Undeclared” and several wildly popular movies, including “Horrible Bosses,” “Identity Thief” and “Four Christmases.”

“The executive producer credit can signify a wide range of contribution,” Gordon explains. “It can mean the person gave or found money for the film,” he says, adding that “it’s generally safe to assume that an EP credit goes to someone who helped the documentary come into being.” What about a TV documentary? “In TV, the EP credit represents a far more significant contribution, usually being part of the genesis of the idea and ongoing management of its production.”

Is it possible that Hale provided the idea and money for “Porter”? I asked Rech. He didn’t hesitate.

“Andrew Hale brought the story to my attention,” Rech says. “He and I are sharing the production costs.”

How much are we talking about?

“I don’t want to get into budget specifics because that could affect the selling price of the film.”

Okay, what percentage of the project’s budget comes from Hale?

“Hale’s stake in the film and contributions to the budget are under 50 percent.”

Then Rech tellingly adds: “Hale and I made the needed investments to hopefully create a great documentary that will be sold and turn a profit.”

So let’s get this straight. Andrew Hale makes millions at taxpayers’ expense defending brutal cops and contesting lawsuits by exonerated prisoners. He invests some money in a TV project that challenges the most famous death row exoneration of our times. Now he and his partner hope to turn a profit at the expense of a man who barely escaped lethal injection and was exonerated by prosecutors, the presiding judge and the governor.

Yet somehow Anthony Porter’s photo is on the front page rather than the mugs of Andrew Hale and his merry men. What’s wrong with this picture? 🐻

*David Protess serves as president of the Chicago Innocence Project. This article was originally published by Huffington Post (www.huffingtonpost.com) on November 5, 2013; it is reprinted with permission of the author.*

## Do you have diabetes?

### Is your diabetes under control?

Living with diabetes in prison is very difficult. Order your FREE copy of *Prisoner Diabetes Handbook: A Guide to Managing Diabetes – for Prisoners, by Prisoners.*

Order your FREE copy and start managing your diabetes and your health.

#### ORDER FORM

Fill out the information below, and send this order form to:

Prison Legal News  
PO Box 1151  
Lake Worth, FL 33460

Name \_\_\_\_\_

ID number \_\_\_\_\_

Facility \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

SPLC



Southern Poverty Law Center

Handbook made possible by the Southern Poverty Law Center



#### Order from Prison Legal News

Add \$6 shipping for orders under \$50

Prison Legal News  
PO Box 1151  
Lake Worth, FL 33460  
Phone: 561-360-2523  
www.prisonlegalnews.org

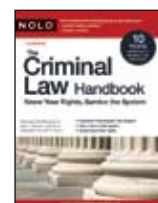
## Great Self-Help Book Deals From Prison Legal News!

### How to Win Your Personal Injury Claim

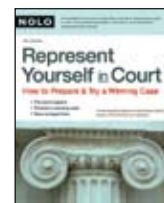
\$34.99

*How to Win Your Personal Injury Claim* shows you how to handle almost every accident situation, and guides you through the insurance claim process, step by step. Learn how to:

- protect your rights after an accident
- determine what your claim is worth
- handle a property-damage claim
- deal with uncooperative doctors, lawyers and insurance companies
- counter the special tactics insurance companies use
- prepare a claim for compensation
- negotiate a full and fair settlement
- stay on top of your case if you hire a lawyer



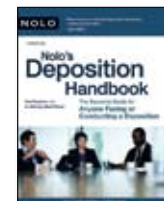
The Criminal Law Handbook  
\$39.99



Represent Yourself in Court  
\$39.99



Legal Research  
\$49.99



Nolo's Deposition Handbook  
\$34.99

NOLO  
YOUR LEGAL COMPANION



# Seventh Circuit: Lifetime Supervision in Pornography Case Set Aside

by Derek Gilna

THE SEVENTH CIRCUIT COURT OF APPEALS has overturned a "supervision for life" provision imposed by the U.S. District Court for the Western District of Wisconsin when defendant Nicolai D. Quinn was sentenced to 97 months imprisonment for possession of child pornography.

Both the Sentencing Guidelines and statute under which Quinn was convicted provided for the possibility of lifetime supervision. However, while his sentence was within the guidelines range and thus presumptively reasonable under *Rita v. United States*, 551 U.S. 338 (2007), the Court of Appeals noted that the district court still had an obligation to "consider a defendant's serious arguments for a sentence below the Sentencing Commission's recommendation."

Quinn had argued for a 10-year term of supervised release and submitted a forensic psychologist's evaluation as well as testimony from two psychologists, all of whom concluded "that he has a lower-than-normal risk of recidivism." Although the sentencing judge briefly discussed the forensic psychologist's findings, he did not discuss the testimony of the two psychologists, nor the length of supervision or its term.

The government confessed error and the Seventh Circuit agreed, noting that "a district judge must explain important decisions," including "arguments about recidivism" and "the interaction between the length and the terms of supervised release." The appellate court observed that Quinn "has a young child, whom he has never been accused of abusing," and who would have been barred from seeing Quinn without advance approval under the district court's sentencing order.

Finally, the Court of Appeals wrote that "Rules that allow public officials to regulate family life likewise call for special justification, and lifetime regulatory power is hard to support when the defendant has not been convicted of crimes against his family or other relatives. Other terms of Quinn's supervised release also may require strong justification when extended for a lifetime." The appellate court noted that the "more onerous the term, the greater the justification required."

Quinn's term of supervised release was vacated and the case remanded for resentencing as to the period of supervised release only. See: *United States v. Quinn*, 698 F.3d 651 (7th Cir. 2012). ■

# Pennsylvania Woman Jailed for Failure to Pay Parking Tickets

THE INCREASED USE OF JAIL FOR DEBTORS resulted in a Pennsylvania woman being imprisoned for not paying parking ticket fines.

"It was a short and sweet hearing," stated Lancaster County Constable Karl Salisbury. "The judge said, 'you owe \$2,300 collateral. You're being committed to Lancaster County Prison.'"

Salisbury then took bookstore owner Melody Williams, 36, to jail with no time to get her affairs in order. Williams' June 2012 incarceration resulted from her failure to completely pay \$2,300 in fines for 11 tickets, most of which were for parking without a permit near her store, Winding Way Books.

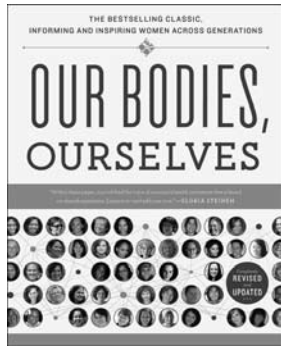
While trying to keep her business

afloat, Williams fell behind on paying the fines. In 2011 she paid a total of \$1,088. For the first five months of 2012 she paid an average of \$135 per month, and just an hour before Salisbury came to arrest her she had paid \$80 on the arrears.

"Parking tickets shouldn't be something they come and take you away for," said Lancaster criminal defense attorney Richard MacDonald.

District Judge Bruce Roth, whose staff set up the payment plan for Williams, had no sympathy for her. "She just pushed it too far," he said. "She had too many payment plans that she defaulted on, too many hearings she didn't show up for. She had established herself as hopelessly unreliable."

For each day behind bars, Williams



*Our Bodies, Ourselves* is a highly praised classic and vital resource

for women of all ages with important information about every aspect of their health and well-being. This newly revised edition gives women everything they need for making key decisions about their health - from definitive information from today's leading experts to personal stories from other women just like them.

**\$26 + \$6 S&H for all orders under \$50.**

Order by mail, phone, or on-line from  
**Prison Legal News**  
PO Box 1151  
Lake Worth FL 33460  
561-360-2523  
[www.prisonlegalnews.org](http://www.prisonlegalnews.org)



**Nolo's Plain-English Law Dictionary**

**\$29.99**

Order from

**Prison Legal News**

P.O. Box 1151

Lake Worth, FL 33460

561-360-2523

Add \$6 shipping for orders under \$50

[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

earned \$40 credit toward her fines. That would mean 47 days before her debt was paid in full. Thanks to her landlord, however, Williams served only eight days. "The whole thing seems screwy to me," said Dennis Cox, who paid \$1,500 to obtain Williams' release. "I thought debtor's prison went out with Charles Dickens." [See: *PLN*, Nov. 2013, p.20].

Attorneys point out that state law was not followed prior to Williams' imprisonment. Rule 456 of the Pennsylvania code requires the court to set a hearing to determine ability to pay when fines or costs are in default; a date to report is then set if the judge imposes a jail term unless an appeal is filed within 30 days. Also, counsel is to be appointed for indigents in such cases under Rule 122. Williams said she was not informed of those rules.

When asked whether justice had been served by incarcerating Williams, Judge Roth replied, "This was a harsh form of justice. I hope this was a wakeup call for her and a message to the citizens to please pay your tickets."

County Commissioner Scott Martin questioned the wisdom of imprisoning

people for failure to pay fines – particularly sending them to the Lancaster County Prison, which is overcrowded. "That hard cell space is very valuable to us," he noted. "We need to take a look at how we handle the cases of those who owe money."

Lancaster attorney Steven Breit observed that a more basic issue was involved. "What you're looking at here is 'does the punishment fit the crime?'" he asked.

Williams thinks not. "Parking tickets should not be a jailable offense," she said. "I know there are people who are going to say 'that's what you get' and I'm okay with that. But there's got to be some alternative. I would have gladly done community service."

Ultimately the experience helped Williams connect with local residents who supported her, though had she served her entire jail term it would have devastated her bookstore business. "I'm so grateful for all the support I got from the community," she said in a June 30, 2013 news report. "I had a lot of people come in and buy books just to help me get back on my feet." ■

Source: [www.lancasteronline.com](http://www.lancasteronline.com)



## Save on Prescription Eyeglasses & Shades

Send for a **FREE** Catalog  
Money Back Guarantee

**Prism Optical, Inc.**  
10954 NW 7th Ave  
Dept: LN0114  
Miami, FL 33168

Inquiries from Friends  
and Family Welcome  
1-800-637-4104  
[www.prismoptical.com](http://www.prismoptical.com)  
[contact@prismoptical.com](mailto:contact@prismoptical.com)



Since 1959

# INMATE TOLL BUSTERS

## Discount Inmate Telephone Calling Services

*Serving: Federal & State Prisons, County Jails and INS Detention Centers Nationwide*

**FREE Same Day Installation, Only \$1.25 Per Month and 6¢ Per Minute**

## PAY ONLY FOR MINUTES YOU USE

**[www.InmateTollBusters.com](http://www.InmateTollBusters.com)**

**Call 24 Hours: 888-966-8655**

We Send Calls To Cell Phones.  
International Call Services Available.  
Call For Rates. Se Habla Español.





# Controversy, Litigation and Performance Problems Plague Private Probation Services

by David M. Reutter and Alex Friedmann

**D**EFENDANTS WHO ARE PLACED ON probation and ordered to pay a growing array of fines and fees levied by local governments facing budget deficits, combined with additional fees charged by private companies hired to provide probation services, are increasingly being squeezed into burdensome debt and, all too frequently, jail.

"With so many towns economically strapped, there is growing pressure on the courts to bring in money rather than mete out justice," said Lisa W. Borden, a partner with the Birmingham, Alabama law firm of Baker, Donelson, Bearman, Caldwell & Berkowitz. "The companies they hire are aggressive. Those arrested are not told about the right to counsel or asked whether they are indigent or offered an alternative to fines and jail. There are real constitutional issues at stake."

## Controversy: Probation for Profit

THE EXPERIENCES OF TWO ALABAMA residents exemplify the real costs faced by those subjected to criminal justice policies designed to balance budgets and generate profit. Gina Kay Ray, 31, received a \$179 speeding ticket in 2009; her license was revoked for failure to appear in court, which she said occurred because the ticket

had the wrong date.

Thus, the next time she was pulled over she was driving without a license. Her court fees totaled over \$1,500 and her case was turned over to Judicial Correction Services, Inc. (JCS), a private probation company. Unable to pay, she landed in jail – and to add insult to injury, she was charged for each day she spent behind bars. Ray, who is unemployed, has been jailed three times totaling 40 days. She still owes \$3,170 in fees and fines, mostly to JCS.

Another Alabama citizen, Richard Earl Garrett, can empathize. A former United States Steel Corp. employee who is out of work and suffers from medical problems, Garrett has spent 24 months in jail and owes \$10,000 for traffic and driver's license violations over the past decade. His case also was handled by JCS.

These are not isolated incidents; JCS provides probation services to more than 100 Alabama courts, as well as court systems in Georgia, Florida and Mississippi.

Georgia has extensive experience with private probation companies. With around 40 for-profit probation services operating in over 640 courts statewide, impoverished defendants live in fear of being jailed due to their inability to pay fines or fees. [See: *PLN*, June 2010, p.22].

The rise of private probation companies in the Peach State can be traced to a corruption scandal involving former Georgia parole board chairman (and former director of the state's prison system) Bobby K. Whitworth. While serving in public office, Whitworth received \$75,000 from Detention Management Services (DMS) – a private probation firm – to draft and lobby for a 2000 bill, SB 474, that drastically expanded privatized probation services by shifting misdemeanor probation supervision from the Department of Corrections to individual counties.

A Georgia statute, O.C.G.A. § 42-8-100(g)(1), specifically authorizes counties to contract with private companies that provide probation services.

Charged with abusing his office, Whitworth was convicted in 2003 and sentenced to six months in jail, 100 hours of community service, a \$50,000 fine and, ironically, 4½ years on probation. [See: *PLN*, April 2006, p.10; March 2003, p.1]. DMS was later acquired by another private probation company, Sentinel Offender Services, LLC.

A July 2, 2012 article in *The New York Times* highlighted the experience of one Georgia resident whose case was assigned to a private probation company.



Serving You with Excellence Since 2009

**We make it simple.**

**You reach your loved ones by calling a local number. That's a lot cheaper than calling long distance. It's that simple!**

- We charge \$2.50 per month for the number.
- For Calls to anywhere in the U.S., we charge you 5¢ per minute
- To Mexico - 15¢; to Canada - 11¢, to just about anywhere else in the world - 31¢
- No Contract, No Credit Check, No Setup Fee, No Cancellation Fee, No Early Termination Fee
- Cancel anytime; any money left on the account is refunded

Any time you refer a new customer and they sign up, you both get 300 free minutes! Some restrictions apply. Details upon request.

Tell Your Folks to Sign Up at [www.freedomline.net](http://www.freedomline.net)

Or Mail: FreedomLine  
PO Box 7 - SCA  
Connersville, IN 47331

Also see our long-running Classified Ad in this and every issue

FCC Reg. No. 0021217047



Hills McGee pleaded no contest to two misdemeanors in October 2008. Despite the fact that McGee lived on a monthly income of \$243 in veteran's benefits, the court assessed a \$270 fine and placed him on two years' probation with Sentinel Offender Services. The company charged him a \$15 enrollment fee and \$39 in monthly fees, which increased his debt to over \$750 during the first year. Unable to pay, McGee, 53, was eventually jailed.

Stephen B. Bright, president of the Southern Center for Human Rights, said courts are increasingly using fines and fees "for such things as the retirement funds for various court officials, law enforcement functions such as police training and crime laboratories, victim assistance programs and even the court's computer system." As a result, he said, "we end up balancing the budget on the backs of the poorest people in our society."

The Southern Center for Human Rights issued a report in July 2008, "Profiting from the Poor," that examined private probation services in Georgia and found that such services lead to unequal justice for destitute defendants.

"The privatization of misdemeanor probation has placed unprecedented law enforcement authority in the hands of for-profit companies that act essentially as collection agencies," the report stated. "These companies, focused on profit rather than public safety or rehabilitation, are not designed to supervise people or connect them to services and jobs. Rather, they charge exorbitant monthly fees and use the threat of imprisonment and a variety of bullying tactics to squeeze money out of the men and women under their supervision."

A 2010 study by the Brennan Center for Justice examined fee structures in the 15 states with the largest prison populations. "Many states are imposing new and often onerous 'user fees' on individuals with criminal convictions. Yet far from being easy, these fees impose severe – and often hidden – costs on communities, taxpayers, and indigent people convicted of crimes. They create new paths to prison for those unable to pay their debts and make it harder to find employment and housing as well as to meet child support obligations," the Brennan Center wrote. [See: *PLN*, May 2011, p.40].

"Although debtors' prison is illegal in all states, reincarcerating individuals for failure to pay debt is, in fact, common in some," the study found. [See, e.g.: *PLN*, Nov. 2013, p.20; July 2011, p.40].

In an interview with *The New York Times*, J. Scott Vowell, then presiding judge of Alabama's 10<sup>th</sup> Judicial Circuit, said the state's legislature has pressured courts to generate revenue through the collection of fines and fees.

That issue was highlighted in a 2011-2012 policy paper, "Courts are Not Revenue Centers," released by the nonpartisan Conference of State Court Administrators. With respect to traffic violations, the paper noted, "court leaders face the greatest challenge in ensuring that fines, fees, and surcharges are not simply an alternative form of taxation."

### Litigation Against Private Probation Companies

AN INCREASING NUMBER OF LAWSUITS ARE challenging abuses by private probation companies, with mixed results.

"The Supreme Court has made clear that it is unconstitutional to jail people just

**William L Schmidt**  
ATTORNEY at LAW, P.C.

[911CIVILRIGHTS@GMAIL.COM](mailto:911CIVILRIGHTS@GMAIL.COM)

**559.261.2222**

### OCTOBER 2013, CALIFORNIA:

- \$90,000 settlement with CDCR and LA Sheriff
- Confidential settlement with CDCR
- \$600,000 injury recovery
- \$150,000 bad faith settlement
- Federal action dismissed without penalty by agency
- Parole dates granted by BPH

CIVIL RIGHTS-SECTION 1983-FEDERAL AND STATE  
APPEALS AND WRITS- ONLY COMPLEX AND UNIQUE CASES  
PRISON-TRANSFER-DISCIPLINE-VISITING-CLASSIFICATION-HOUSING  
PROP. 36 RE-SENTENCING-3 STRIKES-MEDICAL-PAROLE HEARINGS

-----OUR CLIENTS GO HOME, HOW ABOUT YOU? -----

*Please submit a single page summary of your case. Due to the volume, we cannot return documents or respond to all inquires. We are not a low cost or pro bono law firm, but if you want results, contact us.*

**PO Box 25001  
Fresno, CA  
93729**

## Private Probation Problems (cont.)

because they can't pay a fine," said William M. Dawson, a Birmingham attorney who has sued JCS and local authorities in the town of Harpersville, Alabama on behalf of Richard Garrett and several other plaintiffs.

The suit alleges that JCS does not discuss alternatives to fines or jail and that its training manual "is devoid of any discussion of indigency or waiver of fees" for poor defendants, who have been harassed by the company and sometimes arrested and jailed for failure to pay.

On July 11, 2012, Shelby County Circuit Court Judge Hub Harrington entered an order in the case that essentially took control over the Harpersville Municipal Court due to an "institutional, egregious and undisputed pattern and practice of Constitutional and statutory violations," which he wrote "could reasonably be characterized as the operation of a debtors' prison" and constituted a "judicially sanctioned extortion racket."

Judge Harrington found that defen-

dants were placed on probation without an adjudication by the court or sentencing order; placed on probation with JCS only after they were unable to pay all fines and costs assessed on the day of trial; incarcerated for probation violations, including for failure to pay fees, without an adjudication by the court or sentencing order; incarcerated for failure to appear in court after being ordered to do so by JCS; placed on "extended" probation for years beyond the statutory maximum; and charged "unconscionable fines and fees."

On August 8, 2012, the Harpersville Town Council voted to abolish the municipal court, with all cases to be transferred to the county district court.

The class-action lawsuit remains pending on the issue of damages against the town and JCS. See: *Burdette v. Town of Harpersville*, Circuit Court for Shelby County (AL), Case No. CV 2010-900183.

Dawson also represents Gina Ray in a federal class-action suit filed against JCS and the city of Childersburg, Alabama. The lawsuit alleges that Ray and another plaintiff, Deuante T. Jews, were charged illegal fees and jailed when they were unable to pay.

According to the complaint, "should an individual fail to pay to the satisfaction of JCS, these defendants will revoke probation, impose additional fines and costs and incarcerate the individual and/or impose unreasonable bond requirements, without conducting delinquency or probation hearings and without making any findings, much less any determination of indigency before taking such punitive action."

An attorney representing JCS claimed the suit contained "ridiculous allegations, which are patently false." The case remains pending. See: *Ray v. Judicial Corrections Services*, U.S.D.C. (N.D. Ala.), Case No. 2:12-cv-02819-RDP.

"We hear a lot of 'I can't pay the fee.' It is not our job to figure that out," said Kevin Egan, JCS's chief marketing officer, who noted the company has doubled the percentage of completed sentences in jurisdictions where it is contracted to provide probation services.

Of course, the company's heavy-handed approach to collecting fines and fees, which includes issuing probation violations for defendants unable to pay, resulting in their incarceration, may have something to do with JCS's "success" rate.

"These companies are bill collectors, but they are given the authority to say to someone that if he doesn't pay, he is going to jail," said Augusta, Georgia attorney John B. Long. "There are things like garbage collection where private companies are O.K. No one's liberty is affected. The closer you get to locking someone up, the closer you get to a constitutional issue."

Long represented Hills McGee in a lawsuit against Sentinel Offender Services, which had continued to press McGee to pay probation fees even after a state court granted his petition for habeas corpus, effectively ending his term of probation. McGee's suit sought to hold Sentinel in contempt for "using its position as a probation company to attempt to collect a debt that is not owed or due by threatening to have [him] jailed without bond."

The suit also alleged a state law Racketeer Influenced and Corrupt Organization (RICO) claim against Sentinel for engaging in theft by deception, and challenged the Georgia statute that authorizes counties to contract with private probation companies. The case was removed to federal court in April 2010, which issued an injunction "forbidding Sentinel from taking any action to collect any fee or to have any arrest warrant issued that would interfere with the habeas relief granted McGee" by the state court.

However, the U.S. District Court later granted summary judgment to Sentinel on the RICO claim and held it did not have jurisdiction to hear McGee's statutory challenge. That judgment was affirmed by the Eleventh Circuit Court of Appeals in June 2013. See: *McGee v. Sentinel Offender Services*, 719 F.3d 1236 (11th Cir. 2013).

Additionally, on September 16, 2013, a Georgia superior court issued a combined ruling in eight lawsuits seeking injunctive relief and damages against Sentinel Offender Services; the suits claimed the company had "unlawfully collected excessive supervision fees and employed other procedures to obtain money from probationers."

The court held that the Georgia statute authorizing private probation services does not deprive defendants of due process or equal protection, nor does it "unconstitutionally condone imprisonment for debt."

The superior court also found that private probation companies do not have authority to extend the original term of a

## BETTER JOBS FASTER PAROLE

**The only affordable 2-yr and 4-yr college programs available to inmates**

New Freedom College is designed for inmates, so our 2-yr & 4-yr programs offer a wide range of classes & majors that can all be completed in prison. At only \$33-\$50/credit, NFC will save you over \$20,000 compared to traditional schools like Adams State (\$165/credit + books = about \$25,000 for 120 cr).

### New Freedom has:

- majors you want like Business & Psych
- multi-class & referral discounts
- lots of feedback
- flexibility to meet your needs & openness to your ideas
- low rates that include books, study guides, etc.



We have a Certificate Program so everyone can participate, plus a monthly payment plan to best meet what you're able to afford.

... Write for info guide & enrollment form:



**New Freedom College**  
1957 W. Burnside St. #1660  
Portland, OR 97209  
NewFreedomCollege.org



probated sentence, and that the plaintiffs were "entitled to recover from Sentinel any probation supervision fees collected" after their probation had ended. Further, the company must return any fees collected for electronic monitoring in violation of state law.

The court granted the plaintiffs' motion for partial summary judgment against Sentinel with respect to the improper collection of fees, and certified a class-action case as to that issue.

The class representative, Nathan R. Mantooth, had been sentenced to one year of probation for a traffic violation, and ordered to pay a \$420 fine and complete a driver improvement course. He paid the fine and finished the course, but was jailed after Sentinel claimed he had violated his probation. See: *Mantooth v. Sentinel Offender Services*, Superior Court of Richmond County (GA), Case No. 2013-RCCV-155.

### Performance Problems Reported

MOST RECENTLY, SENTINEL OFFENDER Services has been in the news for failing to properly monitor probationers in sev-

eral California counties. A November 13, 2013 "contract discrepancy report" by Los Angeles County's probation department found that 26% of Sentinel's GPS tracking devices were faulty.

Problems with the GPS equipment included batteries that did not hold a charge and defective monitors that issued excessive false alarms; as a result, some probationers were not being monitored.

"If you have faulty technology, that is a recipe for disaster," remarked Reaver Bingham, deputy chief of the county's probation department.

Probationers on GPS monitoring in Los Angeles County include high-risk sex offenders and felons who have been released from prison to the county's custody. The report by the probation department noted that in some cases Sentinel allowed offenders to continue wearing GPS monitors that the company knew were defective. In other cases, Sentinel simply stopped monitoring probationers.

Further, the company had failed to maintain accurate records related to GPS equipment malfunctions and case notes concerning interactions with probationers.

County investigators found that only 3 of 197 offenders had case notes in their files prior to July 1, 2013, while there were no such records for 87 probationers from July 1 through October 31, 2013.

Sentinel blamed insufficiently trained probation officers and probationers who did not properly maintain their GPS monitors – for example, by failing to charge the batteries correctly. The company said it had attempted to contact county officials about those problems without success.

Previously, in June 2013, Orange County, California canceled its contract with Sentinel after officials found repeated failures with the company's GPS monitoring and home detention equipment.

Sentinel was recently awarded a contract by the Los Angeles County Sheriff's Department, valued at \$7 million, to monitor up to 1,000 offenders. ■

Sources: *New York Times*, [www.judicial-services.com](http://www.judicial-services.com), [www.thinkprogress.org](http://www.thinkprogress.org), [www.al.com](http://www.al.com), [www.sentrak.com](http://www.sentrak.com), *Mother Jones*, [www.wsbtv.com](http://www.wsbtv.com), <http://abclocal.go.com>, *Huffington Post*, *Los Angeles Times*, [www.polygonline.com](http://www.polygonline.com)

**Help From Outside, For Humanity Inside.**  
Offering basic services on the outside.

Help From Outside understands what you're going through. We can help you accomplish the things you need to get done but can't.

We offer:

- High standards & ethics
- Timely & professional services
- Personal touch

"HFO has excellent business etiquette and ethics."  
- T. Brown

"I like that you sent a personal letter. HFO is more personable than your competitors."  
- A. Mitchell

**WE'VE MOVED! PLEASE CONTACT US AT OUR NEW ADDRESS:**

For a brochure and application please send a SASE to:  
Help From Outside | 2620 Bellevue Way NE #200 | Bellevue, WA 98004  
206.486.6042 | [www.helpfromoutside.com](http://www.helpfromoutside.com)

**ColdCrib**  
#1 JAILHOUSE CATALOG  
ISSUE#3 OUT NOW!  
3 FREE Non-Nude PHOTOS INCLUDED!  
WITH PURCHASE  
INMATES MUST SEND \$10  
TO GET YOUR OWN MULTI-PAGE  
CATALOG/MAGAZINE TO ORDER  
HUNDREDS OF LOVELY LADIES PHOTOS  
& OTHER SERVICES FOR THE INCARCERATED

**GET MAIL FROM FEMALE PENPALS**  
GET LISTED ON OUR PENPAL SITE  
[www.COLDCRIB.com](http://www.COLDCRIB.com)  
Send your photo and info along  
with \$30 for 1 FULL year membership  
OR \$30 for Pen-Pal List of up to 50 addresses  
of our registered female PenPals

**ColdCrib communications**  
INMATES CALL CELL PHONES  
\$17/mo Unlimited Calls  
+ \$15 ONE TIME Activation Fee  
Federal, State, County & Local Facility Inmates  
Local Number Provided Same Day!

**NOW INMATES CAN ORDER THEIR OWN NUMBERS!**  
MAKE EVERY CALL HOME A LOCAL CALL  
NO MORE RUNNING OUT OF MINUTES!  
SEND \$3 FOR PHONE PLAN APPLICATION FORM  
OR HAVE YOUR LOVED ONES ORDER ONLINE  
[www.ColdCribCommunications.com](http://www.ColdCribCommunications.com)

**SPECIAL OFFER**  
BEST XXX PHOTOS  
CORRECTIONAL FACILITY FRIENDLY  
VARIOUS BACKSHOTS & POSITIONS  
SET OF 15 (NON-NUDE) SEXY PHOTOS  
ONLY \$16  
INMATES MUST SEND FACILITY CHECK OR MONEY ORDERS  
COLD CRIB  
PO BOX 682407  
FRANKLIN TN 37068  
MUST ADD \$2 S/H FOR ALL ORDERS

# Task Force Linked to Harsh Sentencing Laws and Private Prison Firms Disbands Following Public Scrutiny, Boycott

A NATIONAL CAMPAIGN TO SHUT DOWN a quasi-governmental task force backed by powerful corporate interests, which has promoted harsher sentences, prison privatization and controversial “stand your ground” gun rights legislation, was successful thanks to public pressure and a boycott started by the Occupy Wall Street movement.

The American Legislative Exchange Council (ALEC), purportedly a “non-partisan” non-profit organization, brings together mostly Republican state lawmakers and corporations to develop business- and conservative-friendly model bills that are then distributed among state legislatures nationwide. Lawmakers and corporate officials mingle at “public-private partnership” conferences that are closed to the public, and the model legislation is produced by nine ALEC task forces. About 20% of the model bills are eventually passed into law; the organization has been described as a “bill mill.”

ALEC begrudgingly announced in April 2012 that it was caving in to efforts by the Center for Media and Democracy and the Occupy movement, and would disband its Public Safety & Elections Task Force – which had promoted harsher sentencing laws, anti-immigrant legislation and the self-serving interests of the private prison industry since the late 1980s. [See, e.g.: *PLN*, Jan. 2002, p.1].

The task force, previously known as the Criminal Justice Task Force, also promoted stand your ground laws – which gained national attention after the February 26, 2012 shooting death of 17-year-old Tray-

von Martin in Florida – as well as voter suppression efforts across the U.S. and the Private Correctional Facilities Act, which authorized state governments to contract with private prison companies.

In the 1990s, ALEC drafted model legislation for mandatory minimum sentences, truth in sentencing and three-strikes laws, all of which drove up incarceration rates. Corrections Corporation of America (CCA) executives John Rees and Brad Wiggins served on ALEC’s Criminal Justice Task Force in the 1990s and early 2000s when such legislation was being developed. [See: *PLN*, Jan. 2012, p.20].

Also, in the late 1990s, CCA helped Wisconsin Governor Scott Walker (then a state representative) push legislation that would allow private prisons to operate in Wisconsin and house prisoners from other states.

While those bills failed to pass, Walker and ALEC were successful in pushing through truth in sentencing legislation in 1997, which required prisoners to serve their full sentences without the possibility of parole or supervised release.

More recently, CCA was reportedly involved in Arizona’s controversial anti-immigration law, SB1070, introduced in 2009 by since-recalled state senator and ALEC member Russell Pearce, which was expected to increase the number of immigrants held in detention – such as in CCA’s three ICE detention facilities in Arizona. [See: *PLN*, Nov. 2010, p.1].

Although both CCA and GEO Group – the nation’s two largest prison companies – have participated in ALEC previously,

they are no longer members; CCA reportedly left the organization in 2011. CCA and GEO have denied that they lobby for harsher sentencing laws or increased reliance on incarceration; however, their participation in ALEC, if not to influence such legislation, hasn’t been adequately explained. [See: *PLN*, Nov. 2012, p.26; March 2011, p.1].

Following the death of Trayvon Martin, a boycott targeting ALEC’s corporate members was launched in February 2012 by Occupy Portland (Oregon) and spread nationwide, ultimately costing ALEC hundreds of members and over \$1 million in funding.

The boycott forced ALEC’s corporate membership “to make a more careful, deliberate choice about what kind of political speech it actually wanted to support and put its reputation behind,” the Roosevelt Institute’s Mark Schmitt wrote in the *New Republic*.

On December 6, 2013, *The Guardian* published an extensive report on ALEC, based on internal records, that indicated over 400 lawmakers and 60 corporate members had left the organization due to controversy created by the boycott and public scrutiny. As a result, ALEC’s budget dropped by over one-third of projected income in the first six months of 2013: It collected \$1.4 million less than the \$3.9 million it expected.

Some of the companies that have canceled their ALEC membership include Coca-Cola, Pepsi, McDonald’s, Home Depot, General Electric, Amazon, Walmart, Bank of America and Visa. According to

## MARILEE MARSHALL & ASSOCIATES, ATTORNEYS AT LAW

California State Bar Board of Specialization

**Certified Criminal Law and Appellate Law Specialist**

***If you have a California case you need a California lawyer!***

**(213) 489-7715**



**State and Federal Appeals and Writs, Lifer Parole Hearings and Related Writs**

**29 years of success**

523 West Sixth Street, Suite 1109

Los Angeles, CA. 90014

[marileemarshallandassociates.com](http://marileemarshallandassociates.com)

*The Guardian*, ALEC has started a “Prodigal Son Project” to entice the companies that left to renew their lapsed memberships.

“This is a reflection of the power of sunlight on their activities – for too many years they were operating largely in secret. Corporations are sensitive to these issues,” stated Lisa Graves, executive director of the Center for Media and Democracy, which started its ALEC Exposed Project in early 2011 by analyzing more than 800 of the organization’s model bills.

Not everyone disagrees with ALEC’s conservative and corporate-friendly agenda. Companies that continue to support ALEC reportedly include Google (despite its slogan of “don’t be evil”), AT&T, Chevron, State Farm Insurance, Philip Morris International, Shell and Time Warner Cable, as well as organizations such as Right on Crime, Justice Fellowship and the Charles Koch Institute. Plus 1,810 lawmakers remain members.

“I first came to ALEC over a decade ago. When I was serving in the Bush administration, I’d been privileged to work with ALEC in the federal government,” U.S. Senator Ted Cruz (R-Texas) said on Decem-

ber 5, 2013. “I’ve been privileged to work with ALEC when I was back in Texas with the Texas Public Policy Foundation, leading the 10th Amendment Center, and I’m proud to stand with ALEC today.” Cruz told the organization to “stand your ground.”

It’s worth noting that the successful boycott of ALEC stemmed from a shooting incident tied to a single piece of model legislation produced by the organization, while for decades ALEC has developed thousands of model bills – some designed to increase sentences, expand the nation’s prison system and benefit private prison firms – without public scrutiny, interest or opposition.

ALEC’s decision to disband its Public Safety & Elections Task Force “is a partial victory for the power of grassroots citizen action,” said Graves. “But for Americans concerned about brand-name corporations underwriting ALEC’s extreme agenda,” she added, the organization’s “PR maneuver to try to distance itself from its record of extremism is an empty gesture unless it and the corporations that have bankrolled its operations work to repeal ALEC-backed laws.”

ALEC is currently facing a challenge

to its tax-exempt status by opponents who claim it engages in lobbying efforts in violation of IRS rules for non-profits, which has also made potential donors hesitant to contribute to the organization. To address this issue ALEC is reportedly founding a sister group, the Jeffersonian Project, that would be formed as a 501(c)(4) organization – which would allow it to participate in political activities to a greater extent.

According to notes from an August 6, 2013 ALEC board meeting, “Any activity that could be done by ALEC may be done by Jeffersonian Project if legal counsel advises it would provide greater legal protection or lessen ethics concerns.” Additionally, the separate group would remove “questions of ethical violations made by our critics and state ethics boards and [provide] further legal protection.” ALEC also noted that the Jeffersonian Project would be a “new revenue source ... and will lead to increased funding.”

Sources: *Center for Media and Democracy*, [www.prwatch.org](http://www.prwatch.org), *Rolling Stone*, *The Guardian*, *Huffington Post*, [www.alecexposed.org](http://www.alecexposed.org), [www.alec.org](http://www.alec.org)

**WE  
NEED  
YOUR  
HELP!**

**We are updating the Disciplinary Self Help Litigation Manual (Manville 2007) to help guide prisoners through the misconduct and disciplinary litigation process.**

**To effectively help inmates, we need case law and opinions from state courts that affect this process at the state level.**

**Please send us a copy of any decisions entered by a state court relating to prisoner misconduct/disciplinary actions.**  
(if copy cannot be made, please send original and we will return it at your request)

send all material to:

**Professor Daniel Manville, MSU College of Law**  
**610 Abbot Rd., East Lansing, MI 48823**  
(please do not send summaries, memos, or requests for representation)

# East Mississippi Prison Nightmare

by Christopher Zoukis

ON MAY 30, 2013, THE AMERICAN Civil Liberties Union, Southern Poverty Law Center and law office of civil rights attorney Elizabeth Alexander filed an 83-page complaint in the U.S. District Court for the Southern District of Mississippi, seeking class-action relief for mentally ill prisoners confined in “barbaric and horrifying conditions” and “a perpetual state of crisis” at the privately-operated East Mississippi Correctional Facility (EMCF).

According to the complaint, prisoners at EMCF live in dangerous conditions and are constantly at “grave risk of death and loss of limbs” due to a lack of adequate food, sanitation and basic medical care and medication.

The suit alleges that many prisoners are housed in cells with no lighting and broken toilets, forcing them to defecate on food trays or in plastic bags that they toss through slots in the cell doors. So filthy is EMCF that rats often climb over prisoners’ beds, and some prisoners catch them and put them on leashes as pets.

According to the lawsuit, one prisoner went blind from glaucoma and another had a finger amputated after receiving no treatment for gangrene. Another prisoner had a testicle removed after it swelled to the size of a softball from cancer that went untreated.

“Prisoner-on-prisoner stabbings and beatings are frequent because the locking mechanism on the cell doors can be readily defeated, and some officers are complicit in unlocking doors to allow violence to occur,” the lawsuit alleges. One section of the prison used for solitary confinement is known as “the dead area” or “the dead zone,”

because guards avoid the area, leaving prisoners to set fires to get their attention while the guards simply let the fires burn out. “The air is so contaminated from frequent fires that some prisoners expel black mucus from their noses,” the complaint states.

Opened in 1999, EMCF was designated to house and treat mentally ill prisoners for the Mississippi Department of Corrections (DOC). The facility holds up to 1,500 prisoners and has been operated by a series of for-profit companies since it opened. The current contractor is Utah-based Management & Training Corporation (MTC), which has run the facility since July 2012 after private prison firm GEO Group pulled out of its contracts to operate EMCF and two other facilities. [See: *PLN*, Nov. 2013, p.30].

In June 2012, the Occupational Safety and Health Administration released a report indicating it had fined GEO \$104,000 for health and safety violations at EMCF in 2011 – including exposing employees to workplace violence, failing to take action to reduce the risk of violence and not repairing malfunctioning locks on cell doors.

MTC was not named as a defendant in the lawsuit concerning conditions at EMCF. Company spokesman Issa Arnita said in June 2013 that the situation had improved since the time of the incidents alleged in the suit; for example, prisoner-on-prisoner assaults had dropped 74% while use of force incidents decreased 60%.

“Operationally, it’s a much better place, not just for the offenders, but the employees,” said EMCF Warden Frank Shaw.

Jody Owens, executive director of the Jackson, Mississippi office for the Southern Poverty Law Center (SPLC), disagreed. “We were there two weeks ago,” he noted. “This is happening right now.”

According to the complaint, Mississippi DOC officials have known about the “grossly inhumane conditions” at EMCF but failed to take steps to protect prisoners at the facility. “Rapes, stabbings, beatings, and other acts of violence are rampant,” the lawsuit states, noting that a 16-year-old was placed in a cell with an adult prisoner who sexually assaulted him. Another prisoner, William Eastwood, was repeatedly raped at knifepoint in February 2012 by a prisoner who snorted cocaine during the assault. Eastwood’s cries for help were ignored by a guard who walked away when the assailant told him everything was okay, the complaint alleges. Other mentally ill prisoners have committed suicide at EMCF after guards ignored repeated warning signs.

In 2011, a national correctional health-care expert, Dr. Terry Kupers, wrote a report criticizing EMCF for inadequate mental health staffing. At that time EMCF had only one full-time psychiatrist despite its mission to treat mentally ill prisoners. According to the lawsuit, the psychiatrist’s hours dropped to two days a week after the state hired Health Assurance, LLC, a for-profit company, to provide mental health care at EMCF. Kupers also reported that prisoners were “much thinner, almost emaciated” due to “significant weight loss.”

Gabriel B. Eber, staff counsel for the ACLU’s National Prison Project, said conditions at

## Law Offices of Bruce Zucker

### Post-Conviction Matters in California

- ◆ BPH Hearings (Lifer, MDO, SVP)
- ◆ Criminal Appeals
- ◆ Habeas Corpus Writs
- ◆ Custody Issues
- ◆ Reasonable Rates

### Experienced and Qualified

- ◆ Former U.S. Probation Officer
- ◆ Graduated Top 15%, Loyola Law School
- ◆ Author, Lecturer, and Professor on Post-Conviction Law
- ◆ Licensed California Attorney for 20 Years

Post Office Box 436 ◆ Agoura Hills, CA 91376 ◆ [www.zuckerlaw.net](http://www.zuckerlaw.net)

California Cases Only — Unsolicited Documents Will Not Be Returned  
This is an Advertisement for Legal Services



EMCF are “the worse I’ve ever seen, and I’ve been in prisons all around the country.”

The ACLU has filed suit against Mississippi over prison conditions before. It sued on behalf of prisoners in Unit 32 at the State Penitentiary at Parchman concerning inhumane conditions [see: *PLN*, Feb. 2011, p.22], and again in 2010 over abuses at the Walnut Grove Youth Correctional Facility; the SPLC was co-counsel in the latter case. [See: *PLN*, Nov. 2013, p.30]. The lawsuits ultimately led to major reforms.

“The East Mississippi Correctional Facility is a cesspool,” said Eber. “When you combine solitary confinement, abuse, lack of medical and mental health care, and denial of basic human needs, it’s a recipe for disaster. [EMCF] is a throwback to the brutal prisons of decades ago, and the Mississippi Department of Corrections must do better.”

“Do we still have issues?” asked EMCF Warden Shaw. “Sure. It’s a prison. It’s the nature of the business. But we do everything we can to make it better for the offenders and the employees.”

At a gathering of prisoners’ family members outside the DOC’s headquarters in Jackson on May 30, 2013, Katie Autry

said that her son, who is incarcerated at EMCF and has bipolar disorder and a form of schizophrenia, had been “in isolation, in chains, for the past three months.” She stated, “I saw him yesterday, and he looks terrible. He’s lost probably 100 pounds.”

Owens said the SPLC and ACLU had raised the concerns described in the lawsuit in a May 15, 2012 letter sent to Mississippi DOC Commissioner Chris Epps, but there was no reply. Epps claimed through a spokesperson that he never saw the letter and, in a written statement, noted the Department of Corrections had met with the ACLU and SPLC in the past and had “taken their suggestions” as to other prison-related issues.

The gathering of prisoners’ family members at the DOC’s headquarters focused on what they called the inhumane treatment of prisoners and EMCF’s management by a series of for-profit contractors. “Please don’t put a price tag on our loved ones,” said Autry. “Make sure they get the

help they desperately need.” She added, “Since my son has been in East Mississippi, I have seen his mental state – his mental state got worse, not better.”

On November 22, 2013, the district court granted the plaintiffs’ motion for a protective order in the lawsuit related to production of prisoners’ confidential medical records during the discovery process. The case remains pending. See: *Dockery v. Epps*, U.S.D.C. (S.D. Miss.), Case No. 3:13-cv-00326-TSL-JMR. ■

Sources: [www.aclu.org](http://www.aclu.org), [www.bloomberg.com](http://www.bloomberg.com), [www.digitaljournal.com](http://www.digitaljournal.com), [www.wtok.com](http://www.wtok.com), [www.huffingtonpost.com](http://www.huffingtonpost.com), [www.rt.com](http://www.rt.com), [www.usatoday.com](http://www.usatoday.com), <http://wonkette.com>, [www.splcenter.org](http://www.splcenter.org)

## Learn The Law!

It's a **POWERFUL** influence in your life.

Choose education to help yourself and others. Blackstone's Independent Study Paralegal Program offers you the opportunity to be productive while serving time.

- Learn Civil & Criminal Law
- Learn Legal Research
- 110 Years of Legal Training Experience
- Study in Your Spare Time
- Affordable Tuition, Easy Payment Plan

Only  
**\$30.00**  
Per Month

☐ **Yes!** I'd like to learn more ☐ **Paralegal Course**  
Please rush me **FREE** course information.

Name \_\_\_\_\_ Doc# \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**Blackstone**  
**Career Institute**

Your tuition cost covers your entire program including all textbooks, study guides, exam and homework evaluation services, and your certificate.

P.O. Box 3717 • Allentown, PA 18106



## PRISONER ASSISTANT

REHABILITATION AND REENTRY PLANNING

**Join Our Exclusive Membership, Open a Bank Account and Gain Access to Our Services!**

We only provide services to our clients, no exceptions.

MEMBERS ONLY

**Bank Account** under your social security number. Deposits, Statements, Money Orders, Bank Checks, Green Dot, Stamp Exchange, Wire Transfers, Direct Deposit & PayPal.



**BANKING & FINANCE**

**Prisoner Concierge**

Internet Purchases, Gift Cards, Greeting Cards, Lottery, Sporting News & Current Events, People Search, Personal Shopper. "If It Can Be Done, We Will Try To Do It", see our catalog for more.



**GRAPHIC**

**Virtual Office**

Mailboxes, Emails, Faxes, Texts, Scanning, Copies, Typing, Storage, Document Preparation, Internet Research, Prepaid, Contract & Computer Aided Phones.



**SOCIAL CONTENT**

Place your profile on [prisonerassistant.com](http://prisonerassistant.com) and access our Special Features; Classifieds, Portfolios, Posts & Blogs, Market Place and Sponsor a Prisoner.



**SOCIAL CONTENT**

PO Box 704-AD1  
Lake Harmony, PA 18624-0704  
[www.prisonerassistant.com](http://www.prisonerassistant.com)  
[info@prisonerassistant.com](mailto:info@prisonerassistant.com)  
(570) 722-5800

For more information - send \$4.50 to "Prisoner Assistant" for an Application Package and 80 page color catalog. If you send an SASE you will only receive a brochure.

**Business Development**

**JOIN NOW!**

**Credit Development**

**The services below are available to all prisoners - not just our clients**

**Banking and Financial Management Course**

120 pages, complete course with 8 chapters and exams. Transcript and Certificate available. Send \$25.00 to Prisoner Assistant at the address above with a request for the course. Open to Everyone.

**Personal Reentry Guide and Journal**

233 pages, complete course with 7 chapters and exams. Transcript and Certificate available. Send \$30.00 to Prisoner Assistant at the address above with a request for the course. Open to Everyone.

# Massachusetts Supreme Court: 90 Days in Segregation on Awaiting Action Status without Hearing Violates Due Process

**T**HE SUPREME JUDICIAL COURT OF Massachusetts has ruled that prisoners held in segregated confinement on "awaiting action" status are entitled to due process protections, and such prisoners may not be kept in segregation longer than 90 days without a hearing.

The Court's November 27, 2012 decision resolved a civil rights action brought by Souza-Baranowski Correctional Center (SBCC) prisoner Edmund LaChance. LaChance was in a protective custody unit at SBCC when he received a disciplinary report on December 21, 2005 for throwing a cup of pudding on another prisoner.

He was assigned to SBCC's special management unit (SMU) for seven days as a sanction. After learning of the punishment, LaChance "threatened to commit violence" against the other prisoner, which resulted in another seven-day SMU term. However, he remained in the SMU on awaiting action status for more than ten months after his 14-day disciplinary sanction ended; during that period he received "only informal status reviews." He was returned to the protective custody unit in November 2006.

After five months in the SMU, LaChance filed suit. He claimed the segregation conditions were more restrictive than in the protective custody unit and were substantially similar to those in the Departmental Segregation Unit (DSU).

The superior court agreed and found LaChance's due process rights had been violated when he was denied the procedural protections afforded by DSU regulations.

The superior court therefore granted partial summary judgment to LaChance on his claim for declaratory relief. The court further granted the defendants' cross-motion for summary judgment on claims for damages in their official capacity, but held they were not entitled to qualified immunity in their individual capacity. The defendants appealed and the Supreme Court transferred the case to its docket.

The Court agreed with the superior court that LaChance's ten-month stint in the SMU gave rise to a liberty interest that entitled him to due process protections, as the conditions of confinement in the SMU "constituted the sort of 'atypical and significant hardship' that triggers a right to procedural safeguards," and "bore notable similarities to conditions which the United States Supreme Court has described as 'synonymous with extreme isolation.'"

LaChance was never given a hearing or advised what steps he could take to mitigate the perceived need for his continued segregation. While the acceptable length of administrative segregation is governed by the "rule of reason," the Supreme Judicial Court said the outer limits of segregated confinement had never been articulated.

The Court left the defendants to pro-

mulgate regulations to balance the interests related to segregating prisoners, but held that "in no circumstances may an inmate be held in segregated confinement on awaiting action status for longer than ninety days without a hearing." Because the Supreme Court announced for the first time this rule concerning time limits on the placement of prisoners in segregation absent a hearing, the defendants could not have reasonably known their conduct was unlawful at the time LaChance was confined in the SMU, entitling them to qualified immunity.

Therefore, the superior court's order was affirmed in all respects except as to the qualified immunity issue, and the lower court was instructed to enter an order granting summary judgment to the defendants in their individual capacity. See: *LaChance v. Commissioner of Correction*, 463 Mass. 767, 978 N.E.2d 1199 (Mass. 2012).

The ACLU filed a friend of the court brief in this case and hailed the Supreme Court's ruling. "This is an exciting decision for Massachusetts – and for the rest of the nation," said Amy Fettig, senior staff counsel with the ACLU's National Prison Project. "This decision sets a good example for courts to start reining in the excessive use of solitary confinement in prisons that has been allowed to fester without proper legal restraints." ■

Additional source: [www.aclu.org](http://www.aclu.org)

## LAW OFFICES OF

### ELMER ROBERT KEACH, III



Law Offices of Elmer Robert Keach, III, PC  
1040 Riverfront Center  
P.O. Box 70  
Amsterdam, NY 12010  
518.434.1718  
[www.keachlawfirm.com](http://www.keachlawfirm.com)

Attorney Bob Keach  
NITA Master Advocate  
Member, Multi-Million Dollar Advocates Forum  
Outside Counsel, Prison Legal News  
National Practice

## Experienced Civil Rights Attorney dedicated to seeking justice for those who are incarcerated

*Custodial Death Cases • Wrongful Arrest and Incarceration  
Medical Indifference Cases • Corrections and Police Brutality  
Sexual Abuse and Assault • Illegal Strip Searches  
Class Actions • First Amendment Litigation (Northeast Only)*

Reasonable Hourly Rates for: Criminal Defense, Appeals,  
Post-Conviction Relief, Habeas Corpus

**WHEN YOU OR A LOVED ONE HAVE BEEN WRONGED,  
YOU HAVE A VOICE.**

Attorney Keach prefers all inquiries by mail to be typed, and limited to five pages.  
DO NOT SEND ORIGINAL DOCUMENTS OR ORIGINAL MEDICAL RECORDS.  
Make sure to exhaust your administrative remedies and comply with state law notice requirements, if applicable, to preserve state law intentional tort/negligence claims.



## Washington Defendant Improperly Denied Transcript at State Expense

**T**HE WASHINGTON STATE SUPREME Court held in a November 8, 2012 en banc ruling that an indigent defendant was improperly denied a jury voir dire transcript.

When appealing his convictions for first-degree murder, second-degree murder and two counts of unlawful possession of a firearm, Merle William Harvey requested a jury voir dire transcript at public expense. He needed the transcript to prove his claim that the public was improperly excluded from the courtroom during jury selection. The trial court refused and the Court of Appeals affirmed.

Relying on a relative's sworn declaration that she had been turned away from the courtroom during voir dire, Harvey briefed the issue in the absence of the transcript. The appellate court rejected his argument, however, finding that it "was not supported by the record provided." Harvey sought discretionary review, which was granted.

The Washington Supreme Court reversed, stating, "Harvey contends that the

trial court erred by closing the courtroom during jury selection. Without a transcript of voir dire, the reviewing court cannot properly consider this claim." As such, the trial court had "erroneously refused to order that portion of the record transcribed at public expense."

The Court noted that "It is well established that '[t]he State must provide indigent criminal defendants with means of presenting their contentions on appeal which are as good as those available to nonindigent defendants with similar contentions,'" pursuant to *Draper v. Washington*, 372 U.S. 487, 496 (1963).

"Harvey need not make a particularized factual showing to be entitled to transcripts but need only demonstrate a colorable need," the Supreme Court explained. "He has done so. He is therefore entitled to transcription of the jury voir dire at public expense." Harvey represented himself pro se. See: *Washington v. Harvey*, 175 Wn.2d 919, 288 P.3d 1111 (Wash. 2012) (en banc). ■

## LEARN TO PROTECT YOUR RIGHTS

### YOU HAVE A RIGHT TO

- Adequate medical care
- Protection from assault
- Humane living conditions
- Safety from officer abuse

Learn how to defend your basic human rights with the comprehensive litigation guide, **Protecting Your Health and Safety**, 2nd edition, written specifically for prisoners who are unable to receive help from a lawyer.

Written by Robert E. Toone  
Edited by Dan Manville  
A Project of the Southern Poverty Law Center\*

**COST** \$16 total  
(\$10 + \$6 shipping/handling)  
FREE shipping/handling for orders from Prison Legal News over \$50

### ORDER A COPY

Send a check  
or money order to:  
**Prison Legal News**  
**PO Box 1151**  
**Lake Worth, FL 33460**  
**561-360-2523**

Be sure to include your name, identification number (if any), and mailing address. We also accept VISA and Mastercard. If using a credit card, please include the type of card (VISA or Mastercard), card number, and expiration date.

This book does not deal with legal defense against criminal charges or challenges to convictions that are on appeal. Edition last revised in 2009.

\*Please do not send orders to the Southern Poverty Law Center.

## BRANLETTES BEAUTIES

### OUR SIMPLE POLICIES:

SPECIAL REQUESTS ARE NOT PERMITTED AND ALL MODELS ARE OF LEGAL AGE (BOP-FRIENDLY). DUE TO TREMENDOUS TIME AND COST ANSWERING LETTERS, UNLESS YOU ARE PLACING AN ORDER OR A QUESTION REGARDING YOUR ORDER, WE WILL NOT REPLY TO ANY OTHER QUESTIONS. SASE ARE REQUIRED FOR ANY INQUIRIES OR CONCERNS!

**YOU AND YOU ALONE ARE RESPONSIBLE FOR YOUR SELECTIONS BEING ALLOWED INTO YOUR FACILITY:**

KNOW YOUR INSTITUTIONS POLICIES AS TO WHAT IMAGE CONTENT IS ALLOWED. RETURNED ORDERS ARE NON-REFUNDABLE. THEY WILL BE HELD FOR 14 CALENDAR DAYS IN ORDER FOR YOU TO SEND SELF-ADDRESSED STAMPED; 3 FIRST CLASS STAMPS PER ENVELOPE, WITH A STREET ADDRESS FOR EVERY 20 PICTURES. ALL RETURNED IMAGES HELD AFTER TWO WEEKS WILL BE RE-SOLD AND WE WILL RETURN TO OUR STOCK.

**ALL PAYMENTS ARE BY INSTITUTIONAL CHECKS OR U.S. POSTAL SERVICE OR WESTERN UNION MONEY ORDERS.**

THESE PAYMENTS ARE PROCESSED IMMEDIATELY AND SHIPPED IN LESS THAN 3-4 WEEKS. ANY OTHER COMPANY MONEY ORDERS DELAY SHIPMENT 8-10 WEEKS OR UNTIL THAT MONEY CLEARS OUR BANK. YES, WE DEAL WITH PEOPLE THAT ARE, WHILE IN PRISON, STILL TRYING NICKEL AND DIME SCAMS...

**ALL SALES ARE FINAL! EACH CATALOG HAS 84 GORGEOUS LADIES TO CHOOSE FROM HIGH QUALITY PRINTS ON 4X6 GLOSSY PHOTO PAPER**

OUR PRICES ARE SIMPLE:

1-4999 PHOTOS = 0.45 CENTS EACH  
5000+ PHOTOS = 20% DISCOUNT  
1-9 CATALOGS: \$3.00 EACH (+SASE)  
10 CATALOGS: \$25.00+SASE (4 STAMPS)

SHIPPING & HANDLING:

DUE TO VARIOUS PRISON POLICIES REGARDING HOW MANY PICTURES CAN BE SENT IN ONE ENVELOPE, OUR POLICY IS AS FOLLOWS:

01 - 5 PHOTOS---\$1.00 PER ENVELOPE  
06 - 15 PHOTOS---\$1.50 PER ENVELOPE  
16 -25 PHOTOS---\$2.00 PER ENVELOPE

### BRANLETTES BEAUTIES

SELECT YOUR FAVORITE:

WHITE CATALOGS (60 VOLUMES)  
BLACK CATALOGS (60 VOLUMES)  
ASIAN&LATINO CATALOGS (60 VOLUMES)  
PLEASE STATE WHAT STYLE PHOTOS'S:  
PROVOCATIVE POSES OR NUDE

### FREE CATALOG???

YOU READ IT RIGHT!  
JUST SEND A SELF ADDRESSED ENVELOPE TO US.  
AND WE WILL SEND TO YOU ONE BOP-FRIENDLY  
SAMPLE CATALOG (ONE PER CUSTOMER) WITH 84  
GORGEOUS GIRLS IN FULL COLOR.  
ACT NOW AS THIS OFFER  
WILL NOT BE AROUND LONG!!

BRANLETTES BEAUTIES BEAUTIES BAG A RANDOM SELECTION OF 50 OF THE  
RARE AND EXOTIC \*\*\*YES, FIFTY BEAUTIES ALL POSING JUST FOR YOU!\*\*\*  
PLUS TWO OF OUR FINEST COLOUR CATALOGS ONLY \$19.95 DID YOU READ THAT  
RIGHT??? \*\*\*\$19.95\*\*\* YES, ONLY \$19.95 FOR 50 OF BRANLETTES  
BEAUTIES BEAUTIES (PLEASE SPECIFY NUDE OR BOP-FRIENDLY) +++PLUS+++  
TWO OF OUR FINEST COLOUR CATALOGS FREE (YOU PICK A VOLUMES)  
OUR REGULAR SHIPPING AND HANDLING POLICIES APPLY.

**BRANLETTES**  
**P.O. BOX 5765**  
**BALTIMORE, MD**  
**21282**

# Programs Proliferate for Incarcerated Veterans

**A**N INCREASING NUMBER OF CRIMINAL justice programs are being made available to military veterans who have been charged with or convicted of crimes, including specialized prison and jail housing units and court diversion programs.

According to a report by the U.S. Department of Justice (DOJ) based on 2004 data, approximately 9.4% of state and federal prisoners are veterans. That is roughly equivalent to the percentage of veterans in the general population, which was 10.4% based on census data from the same time period as the DOJ report.

Veterans courts – similar to drug courts and mental health courts – have been established in around 32 states, primarily in Pennsylvania, Texas, California, Illinois, Michigan and Wisconsin. The first veterans court was founded in Buffalo, New York in 2008, and provides veterans with treatment, support, training, housing and mentors.

A *Toledo Blade* editorial endorsing a court diversion program for veterans in Ohio stated the program recognizes “the service of veterans to their country, acknowledges that some carry serious psychological and physical problems, including post-traumatic stress syndrome and alcoholism, and connects them to a range of services they might not have known about.”

Offenders with low-level felonies or misdemeanors, including drug possession, DUI and assault, are typically placed on probation in veterans courts. They are required to get counseling through the Veterans Administration (VA), address their addiction problems, and undergo regular testing for drugs and alcohol.

A national inventory by VA Veterans Justice Programs found there were 168 courts, dockets and tracks designated for veterans charged with crimes as of the end of calendar year 2012.

In addition to veterans courts, a number of prisons and jails nationwide have developed special housing units for prisoners who served in the military.

In Columbus, Georgia, Sheriff John Darr said he created a 16-bed unit for veterans at the Muscogee County Jail to help break the cycle of recidivism. The program provides “specialist services” which include a community group that assists incarcerated veterans who have mental illnesses, including post-traumatic stress disorder (PTSD) and depression.

“It’s really unique,” Darr stated. “What

we’re bringing together is a lot of resources.” He added, “If [veterans] are not dealing with issues they may have, where are they going to go? They’re going to go to local county jails.”

In Virginia, a barracks-style dorm opened in November 2012 at the medium-security Indian Creek Correctional Center, and a special veterans unit was launched at the State Correctional Institution (SCI) in Pittsburgh, Pennsylvania in January 2013.

The veterans unit at Indian Creek reminds Raymond Riddick – one of about 2,000 Virginia state prisoners who identify themselves as veterans – of U.S. Navy boot camp.

“Only, the beds weren’t bolted to the floor” at the boot camp, he said.

Around 60 prisoners in the veterans unit at Indian Creek are supervised by guards who also have military backgrounds. Logos of every branch of the military are painted above the entrance to the dorm, and the prisoners’ job assignments have military themes: “mess crews” work in the kitchen, a “hazmat team” cleans up spills and an “intel coordinator” works to gather information on veterans programs to assist prisoners after their release.

At SCI-Pittsburgh, the facility’s B Block houses up to 250 veterans who receive treatment for PTSD and drug and alcohol problems, and are taught how to turn their past military experience into employment opportunities.

“Most of them did something prior to service or during service that makes them employable,” said William Woods, a deputy superintendent at SCI-Pittsburgh. “By kind of putting those guys together in a squad or a group, it allows them to share their experiences to help each other out. It looks at building camaraderie based on what they’ve gone through in the service.”

A number of California jails have developed programs for veterans, too. The Veterans Moving Forward unit, which opened on November 1, 2013 at the Vista Detention Facility in San Diego, is painted red, white and blue. Prisoners in the unit take classes related to issues such as PTSD, anger management, parenting and substance abuse. There are incentives for veterans to participate in the program, including extra visits, access to a vending machine and more recreation and TV time.

“This initiative brings the resources to the veterans while they’re in our facilities and then assists in their transition back to the community,” stated San Diego County

Sheriff Bill Gore.

Nearly 300 prisoners are housed in veterans dorms in the Los Angeles County jail system, while 48 veterans reside in a separate unit at a San Bruno jail operated by the San Francisco Sheriff’s Department.

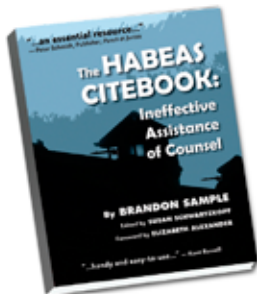
The Florida Department of Corrections provides veterans units at five facilities that each house around 400 prisoners, where participants are required to adhere to strict rules and take part in flag raising and retiring ceremonies each day. [See: *PLN*, Dec. 2012, p.14].

In October 2013, a housing unit for veterans opened at the Erie County Holding Center in New York; it is believed to be the first jail unit designated for veterans in that state. “If anybody deserves a second chance, it’s the men who put their lives on the line to defend our nation,” said Sheriff Timothy Howard.

Even Maricopa County, Arizona Sheriff Joe Arpaio, who is infamous for his abusive treatment and humiliation of prisoners, recently opened a jail unit for around 250 veterans. Announcing the unit on December 3, 2013, Arpaio wrote: “When you made the choice to serve your country in the Armed Forces, you wrote a blank check to all citizens promising to defend their freedom and way of life unconditionally. This program is our way of letting you know that we have not forgotten that commitment despite whatever circumstances in your life have landed you into the custody of the Maricopa County Sheriff’s Office.”

Such programs are laudable; however, prison and jail officials should consider extending the rehabilitative, treatment and assistance resources offered in veterans units to non-veteran prisoners – many of whom also have substance abuse and mental health problems, and who also could benefit from a second chance. Although incarcerated veterans have served their country they have also committed crimes – just like other prisoners, who are equally deserving of similar programs and opportunities. ■

Sources: [www.guardian.co.uk](http://www.guardian.co.uk), [www.erie.va.gov](http://www.erie.va.gov), *Toledo Blade*, [www.hamptonroads.com](http://www.hamptonroads.com), *Pittsburgh Post-Gazette*, [www.abcnews.go.com](http://www.abcnews.go.com), [www.businessinsider.com](http://www.businessinsider.com), [www.pacourts.us](http://www.pacourts.us), [www.mirecc.va.gov](http://www.mirecc.va.gov), [www.ncsc.org](http://www.ncsc.org), [www.economist.com](http://www.economist.com), [www.justiceforvets.org](http://www.justiceforvets.org), *Los Angeles Times*, [www.countynewscenter.com](http://www.countynewscenter.com), [www.abc15.com](http://www.abc15.com)



**The Habeas Citebook: Ineffective Assistance of Counsel**  
**Brandon Sample**  
 ISBN: 978-0-9819385-1-6  
 Paperback, 224 pages

**\$49.95**

The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an invaluable resource that identifies hundreds of cases where the federal courts have granted habeas relief to prisoners whose attorneys provided ineffective assistance of counsel.



**Prisoners' Guerrilla Handbook to Correspondence Programs in the United States and Canada, 3rd Edition**  
**Jon Marc Taylor**  
 ISBN: 978-0-9819385-0-9  
 Paperback, 224 Pages

**\$49.95**

The greatly anticipated and newly updated third edition of the Prisoner's Guerrilla Handbook to Correspondence Programs in the United States and Canada has finally arrived! Author Jon Marc Taylor's brand new version is the latest in this unique and highly successful guidebook for the prisoner-student. This invaluable tool and how-to handbook provides the reader with step-by-step instructions to find the appropriate education program for correspondence high school, vocational, paralegal, undergraduate, and graduate courses offered in the U.S. and Canada today.



**Prisoners' Self-Help Litigation Manual, 4th Edition**  
**John Boston & Dan Manville**  
 ISBN: 978-0-1953744-0-7  
 Paperback, 960 pages

**\$45.95**

Prisoners' Self-Help Litigation Manual, in its much-anticipated fourth edition, is an indispensable guide for prisoner litigants and prisoner advocates seeking to understand the rights guaranteed to prisoners by law and how to protect those rights. Clear, comprehensive, practical advice provides prisoners with everything they need to know on conditions of confinement, civil liberties in prison, procedural due process, the legal system, how to actually litigate, conducting effective legal research, and writing legal documents. It is a roadmap on how to win lawsuits.

- ☐ Habeas Citebook,  
Ineffective Assistance of Counsel  
\$49.95
- ☐ Prisoners' Guerrilla Guide to  
Correspondence Programs  
3rd edition  
\$49.95
- ☐ Prisoners' Self-Help  
Litigation Manual  
4th edition  
\$45.95

**Shipping included in all prices**

**Order by mail, phone, or on-line.** Amount enclosed \_\_\_\_\_

By: ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_ ZIP \_\_\_\_\_

PUBLISHED BY

**PRISON LEGAL NEWS**  
 Dedicated to Protecting Human Rights

PO Box 1151 • Lake Worth, FL 33460  
 Tel 561-360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

# Arizona TV Reporter Blames Prisoners for Citizens' Lack of Healthcare

WHEN LYNETTE BARRETT WAS SEARCHING for someone to blame for her husband's battle with liver disease and his long wait for a transplant, a TV reporter was quick to point his finger at America's favorite scapegoat: prisoners.

Morgan Loew, a reporter for KPHO in Phoenix, Arizona, concluded during a May 2012 broadcast that Barrett's husband, Murray, had been waiting nine years for a new liver because the Arizona Department of Corrections (ADC) provides "life-saving" medical care to prisoners and, more specifically, to those on death row.

Loew's investigative report revealed that on November 20, 2011, the ADC gave convicted murderer Robert Moorman – who was awaiting execution for killing his adoptive mother in 1984 – a quintuple heart bypass at "taxpayers' expense," only to execute him three months later.

Meanwhile, Murray Barrett has had three hospital stays, each costing more than \$50,000, and he and his wife have had to pay \$100,000 upfront for his treatment because they were dropped from the state's Medicaid system – as have thousands of other Arizonans.

For viewers who didn't see the correlation between Moorman's bypass surgery and Barrett's need for a liver transplant, Loew edified them: "Some of these condemned inmates are receiving the kind of state-funded medical care being denied to law-abiding citizens who don't have health insurance," he stated.

And because constitutional and human rights continue to be foreign concepts in

Arizona, Loew asked Dan Pochoda, legal director of the Arizona ACLU, "Why does the state pay for healthcare for prisoners?"

"Because there's no choice," Pochoda told him, likely wondering why he would have to explain that the state must provide medical care to prisoners because they have no other way to receive treatment – and that the failure to provide care for serious medical conditions is a violation of the Eighth Amendment.

Apparently oblivious to such constitutional requirements, Loew also failed to mention that at the time Moorman received bypass surgery he had neither exhausted his final attempt to have his sentence commuted nor had his execution date been scheduled. But that would have complicated Loew's premise that Barrett's inability to obtain a liver transplant was somehow related to the healthcare that prisoners receive.

In reality, as most people know who have served time, medical treatment in prisons and jails is predominately poor – and Arizona is no exception. In fact, a class-action suit is currently challenging the adequacy of healthcare in ADC facilities, which has been contracted out to Corizon, a for-profit company. The lawsuit, which remains pending, was filed in March 2012 – two months before Loew aired his news report. See: *Parsons v. Ryan*, U.S.D.C. (D. Ariz.), Case No. 2:12-cv-00601-PHX-NVW [PLN, July 2013, p.1].

On November 6, 2013, the Arizona chapter of the American Friends Service Committee, a Quaker organization, released a report titled "Death Yards:

Continuing Problems with Arizona's Correctional Health Care." The report cited numerous case studies describing delays in and denials of medical services for prisoners, problems with chronic and infectious disease care, medical staffing shortages and deficiencies in mental health care, among other issues. The AFSC report concluded that inadequate medical treatment in ADC facilities was "the result of policies, organizational culture, and an operating model that prioritizes cutting costs over delivering adequate and timely care."

Which is a far cry from the ample medical services that Loew glibly implied prisoners receive at the expense of non-incarcerated citizens. As of the end of November, almost 80 Arizona state prisoners had died during 2013, mostly due to medical-related causes.

"While prisoners have always written to us complaining of the poor quality of medical care in the Arizona Department of Corrections, there was a noticeable uptick in the number and seriousness of these requests over the past year," said AFSC director Caroline Isaacs.

Sources: [www.corspecops.com](http://www.corspecops.com), KPHO-TV, [www.ktar.com](http://www.ktar.com), [www.azcorrections.gov](http://www.azcorrections.gov)

## Hepatitis & Liver Disease: A Guide to Treating & Living with Hepatitis & Liver Disease

Revised ed. By Dr. Melissa Palmer  
See page 61 for more information.



**INMATE SHOPPER**  
HOLIDAY! For Gifted Families

WHY Everyone is talking ABOUT THIS GUY!

100 SPANISH

ARTISTS \$50,000

OVER 1000

300

100

AMERICAN LARGEST UP TO DATE GUIDE FOR INMATE SERVICES & SHOPPING

EVERY ISSUE CONTAINS:

- 200 Pen Pal Resources
- 400 Businesses Serving Prisoners
- 200 Non Profit Orgs for Prisoners
- 80 Designer Gift Stores
- Free Ad Space to Sell Your Stuff
- 15 Magazine Sellers
- 32 Sexy Photo Sellers
- and lots of ladies, too, BOP cool.
- Typist & Publishing Services

**America's Largest Up-To-Date Resources For Prisoners**

Pay to: Inmate Shopper  
P.O. Box 231 • Edna, TX 77957  
PRICE: \$17.99 + \$6 Priority Mail with Tracking #.

**amazon.com**

Corrlinks:  
[info@inmateshopper.com](mailto:info@inmateshopper.com)

\$14.98  
FREE Shipping

Bonus!  
100 Orgs en Espanol!



**The Best 500**  
NON PROFIT ORGANIZATIONS  
For Prisoners & Their Families

THIS IS AMERICA'S ONLY UP TO DATE  
COMPREHENSIVE, PRISON RESOURCE OF NON PROFIT ORGS  
SPECIFICALLY FOR PRISONERS

Indexed by State, Name of Org and Subject

Find the help and info you need Fast!

Legal Resources  
Health & Mental Care  
Education  
Employment  
Financial  
Family Life  
Housing  
Medical  
Mental Health  
Nutrition  
Physical Therapy  
Religion  
Social Services  
Substance Abuse  
Technology  
Transportation  
Vocational Training  
Writing Skills

Edited By: George Saper - Published By: Prison Publications  
©2013 by Prison Publications Inc. All Rights Reserved



# Study: Risk of Murder, Overdose and Suicide Higher for Recently Released Jail Prisoners in New York City

A STUDY BY RESEARCHERS WITH THE New York City Department of Health and Mental Hygiene (DHMH) supports reforms long urged by prisoner advocates: more mental health and substance abuse treatment, and less incarceration.

After studying over 155,200 people released from New York City jails between 2001 and 2005, the researchers found that former prisoners were twice as likely as other people to die from homicide or a drug overdose. The risks were especially high within the first two weeks after release, with death rates five to eight times greater than non-former prisoners during the same two-week period.

According to the study, which was published in the *American Journal of Epidemiology*, whites and people who were homeless before going to jail also had an elevated risk of suicide.

The findings, DHMH researchers said, were in line with similar studies in the United Kingdom and Australia, and illustrate the need for more mental health counseling and substance abuse treatment – not only in jails but also for the formerly incarcerated.

“You may not have a job, you may not have an apartment” after being released from jail, said Dr. Josiah D. Rich, the director of Brown University’s Center for Prisoner Health and Human Rights in

Providence, Rhode Island. “Your social relationships may be up in the air.”

The stress upon release is sometimes too great for former prisoners, who are more likely to suffer from psychiatric disorders, such as schizophrenia and major depression, than people who have not been incarcerated. Estimates indicate that a significant number of prisoners have mental health issues and most have a drug or alcohol problem.

“The largest mental health facility in New York City is Rikers Island,” Rich said, referring to the city’s largest jail. Yet just a quarter of those held in prisons and only 7% of those in jails receive treatment or counseling during their incarceration.

As a result, former prisoners often revert to self-destructive behaviors to cope with the instability that accompanies freedom. For example, if opiate addicts – users of heroin, as well as oxycodone and hydrocodone – return to their addictions after release, it’s a major problem, Rich said.

“If you start using again at the same levels as before,” he explained, “you’re likely to overdose.”

Of the former prisoners studied by DHMH researchers – all of them over 16 years old who spent at least one night in a New York City jail – 1,149 died following their release sometime during the five-year study period. That number includes 219 drug-related deaths and an equal number

of homicides. Released prisoners were, on average, twice as likely to die from drugs or homicide than people who had not served time in jail; there were also 35 suicides during the study period.

Rich said that people who are only in the jail system for a short time can still be helped, given enough resources. “You can sit down with someone and pretty quickly see if they have an opiate addiction,” he noted.

The best way to assist those who serve longer stints in jail, Rich argued, is even more obvious. “The answer,” he said, “is to figure out how we can stop incarcerating so many people.” ■

Sources: [www.reuters.com](http://www.reuters.com), <http://aje.oxford-journals.org>

## TYPING

**SERVICES**  
Provided since 1998

**Specifically designed, with special rates for the incarcerated person.**

**Black / Color Printing and Copying**

**SEND A SASE FOR A “FREE” PRICE LIST AND MORE INFORMATION TO:**

**LET MY FINGERS DO YOUR TYPING**

Sandra Z. Thomas (dba)

P O Box 4178

Winter Park, Florida 32793-4178

Phone: 407-579-5563

**Special Offer: \$2.00 off first order.**

Special offer void after: 12/31/2013

## Support Prison Legal News with these beautiful gifts!

CALL **561-360-2523**, MAIL ORDER OR USE WEB FORM

[HTTP://WWW.PRISONLEGALNEWS.ORG/](http://WWW.PRISONLEGALNEWS.ORG/)



## Hand Embroidered Greeting Cards



Made by women prisoners in Cochabamba, Bolivia. Each card is individually made, no two are identical. The prisoners are paid a fair wage for each card and keep 100% of the pay to support themselves and their families. Local fair trade non-profits in Bolivia supply the materials for the cards. **\$6.**

**Hand Made Hemp Tote Bag** All natural hemp tote bag hand made in Vermont with the Prison Legal News logo on both sides, in red and black. Great for carrying books, groceries, and more! Stamped on the inside that no sweatshop, prison or child labor was used in its manufacture. **\$12.**

\$6 shipping and handling for orders under \$50.

# California Parole Board Agrees to Implement Policy to Fix Terms at Lifers' Initial Hearings

by John E. Dannenberg

ON DECEMBER 16, 2013, THE CALIFORNIA Board of Parole Hearings (Board) and life-sentenced state prisoner Roy Butler entered into a settlement agreement wherein the Board agreed to fix base and adjusted base terms (guidelines for the minimum amount of time that should be served) for all lifers at their initial parole suitability hearings.

Butler, 46, filed a petition for writ of habeas corpus challenging his denial of parole by the Board; he had served 26 years and been denied parole five times. Butler raised two issues in a May 28, 2013 supplemental petition: 1) there was no evidence to support his denial of parole, and 2) the Board should have fixed his base term under the long-standing provisions of the old Indeterminate Sentence Law (ISL) rather than *not* fixing his term until he is found suitable for parole release.

On appeal, the First District Court of Appeal, Division 2 (1<sup>st</sup> DCA) took an aggressive stance when reviewing the ISL's continuing viability in requiring the setting of minimum terms for all lifers at the outset of their incarceration, thereby reopening the "proportionality" issue (like time for like crimes) raised in that Court by this writer in 2001, which was approved in part by *In re Dannenberg*, 102 Cal.App.4th 95 (Cal.App. 1st Dist. 2002), but subsequently overruled by the California Supreme Court. See: *In re Dannenberg* 34 Cal.4th 1061 (Cal. 2005). The appellate court built upon the concerns expressed by Presiding Justice J. Anthony Kline in his recent concurring and dissenting opinion in *In re Morganti*, 204 Cal.App.4th 904 (Cal.App. 1st Dist. 2012), thereby reopening the "proportionality" argument.

The 1<sup>st</sup> DCA also took the unusual preemptive action of bifurcating Butler's petition into two cases – one regarding his denial of parole and the other solely related to the legal question of term-fixing. The Court's reasoning was this: If Butler was granted parole via the first portion of his combined-issue petition, then the second part arguably would become moot. But if the term-fixing matter were separated as a legal issue of statewide importance, it could be resolved irrespective of Butler's individual parole status.

Butler and the Board entered into an agreement that will implement the terms of the settlement relative to term-fixing regardless of the outcome of Butler's challenge to the denial of his parole. In the latter regard, the parties agreed to expedite the appellate court's ruling by waiving oral argument. Further, if Butler prevails in his challenge, the Board agreed to conduct an expedited parole suitability hearing and fix his base term and adjusted base term at that hearing; to order an expedited transcript of the hearing; and to "shorten its internal period of decision review from 120 days to 30 calendar days."

With respect to term-fixing for life-sentenced prisoners, the Board agreed to "announce a policy of calculating the base term and the adjusted base term for all life term inmates at the initial parole consideration hearing," and to promulgate new regulations that ensure terms are fixed for all lifers at their initial parole hearings. For lifers who have already had their initial parole hearings and a term was not fixed, the regulations shall provide that a term will be fixed at their next hearing.

By agreeing to settle, the Board arguably dodged a bullet. The settlement says nothing about "proportionality" or the decision-making process to determine "suitability" for parole. Nonetheless, by having lifers' terms fixed at their initial parole hearings, they could be released after serving less time than under the Board's current procedures – provided they are found suitable prior to their fixed term, net of good conduct credits. Currently, by the time lifers have their base term set by the Board, they have often already exceeded that term.

Specifically as to the new term-fixing policy, the settlement agreement states: 1) as soon as practicable, the Board shall begin implementation of new policies and procedures that will result in the setting of base terms and adjusted base terms for life-sentenced prisoners at their initial parole hearings, or at the next scheduled parole hearing that results in a grant of parole, a denial of parole, a tie vote or a stipulated denial of parole; and 2) the Board will commence rulemaking proceedings designed to

memorialize and embody such new policies and procedures within 90 days after the settlement goes into effect.

The settlement provisions related to term-fixing for lifers will not become effective until the Court of Appeal issues a ruling (whether favorable or unfavorable) on Butler's bifurcated challenge to the denial of his parole. Upon such a ruling, "the terms of settlement ... will become effective immediately." See: *In re Roy Butler*, First District Court of Appeal, Division 2 (CA), Case Nos. A139411 and A137273.

Although the settlement will result in base and adjusted base terms being fixed sooner for life-sentenced prisoners, the Board still must find that they do not pose a danger to public safety and are otherwise eligible before parole is granted.

"We're talking a change that could have a beneficial effect for thousands of inmates who up to now have had no idea when, if ever, they might have a chance for parole," stated Jon Streeter, one of Butler's attorneys.

As a practical matter, the settlement will affect around 35,000 California lifers – about ¼ of the state's prison population. The only lifers not affected are those serving life without parole and those whose initial parole eligibility dates exceed their life spans. The latter category is increasing, and the principal drivers of this increase are that whereas lifers whose older crimes involved the use of a gun only received a two-year sentence enhancement, today they receive an enhancement of a consecutive 25 years to life. Additionally, third-strike cases and multiple sex offenses are now often punished by consecutive life sentences totaling over 100 years. ■

Additional sources: *Associated Press*, [www.sfgate.com](http://www.sfgate.com)

## **Roget's Thesaurus**

Can't think of the right word?  
Let Roget's help you! Over 11,000  
words listed alphabetically.  
See page 61 for more information.

# State of Washington Prison Phone Justice Campaign is Launching in 2014!

*Prison Phone Justice Project needs your help for statewide campaign!*

**W**hile much progress has been made in reducing the costs of long distance prison calls, we are still fighting to reduce the high costs of in-state prison and jail calls at the local level. Starting in 2014, the Human Rights Defense Center (HRDC), the parent organization of Prison Legal News, will be reopening its Seattle office to launch the Washington Prison Phone Justice Campaign.

This is our first statewide phone justice campaign, and we're excited to have people involved on both the local and national levels who are dedicated to ending the exorbitant phone rates and kickbacks associated with the prison phone industry. David Ganim, HRDC's national Prison Phone Justice Director, has already been obtaining the phone contracts and rates for all 39 county jails in Washington, as well as data from the Washington Department of Corrections.

We recently hired a local campaign director, Carrie Wilkinson, who will manage our office in Seattle and coordinate the statewide campaign. Washington prisoners and their families pay some of the highest phone rates in the nation, and we need your help to win this battle!

Here's how you can help – first, please visit the campaign website:

**<http://nationinside.org/campaign/campaign-for-washington-prison-phone-justice>**

There you can see all the ways you can make a difference. The site allows you to sign up for the campaign and upload videos and share blog entries about how high prison phone rates make it difficult for you to stay in touch with your incarcerated loved ones. You can also upload an audio message, and even call in your story to **1-877-410-4863**, toll-free 24 hours a day, seven days a week! We need to hear how you and your family have been affected by high prison phone rates. If you don't have Internet access, you can mail us a letter describing your experiences and we'll post it. Send letters to HRDC's main office at: **HRDC, Attn: WA Phone Justice Campaign, P.O. Box 1151, Lake Worth, FL 33460**. Washington state prisoners can mail us letters and send a copy of this notice to their family members so they can get involved.

By choosing to participate in the Washington Prison Phone Justice Campaign, you will be playing a key role in ending the unfair phone rates that prisoners' families have to pay. We cannot win this battle without your help, so please visit the campaign website and share your experiences! Donations are also welcome and greatly appreciated, and can be mailed to the above address or made online via the campaign site. Thank you for your support!

# How Actions by Oklahoma Governor's Staff Led to Weakened State Justice Reforms

by Clifton Adcock, Oklahoma Watch\*

**B**EHIND-THE-SCENES MOVES BY OKLAHOMA Governor Mary Fallin's senior staff members helped lead to a severe weakening of a program designed to cut the state's high incarceration rates and save taxpayers more than \$200 million over a decade, according to interviews and records obtained by Oklahoma Watch.

The efforts by the governor's staff, assisted by legislative leaders, to take control of the state's Justice Reinvestment Initiative (JRI) took place during periods when staff members met with representatives of private prison companies, which stood to gain or lose depending on how the initiative was implemented, according to emails and logs of visitors to Fallin's office.

During that time, private prison company representatives also made donations to Governor Fallin's 2014 campaign as well as to legislators, Oklahoma Ethics Commission records indicate.

Steve Mullins, Fallin's general counsel, said private prison groups and lobbyists played no role in the approach that he and other staff members took in regard to the initiative.

"I know for a fact I've never recommended a private prison as a JRI solution, so I know that it wouldn't have influenced anything because it didn't influence my recommendations," Mullins said.

He also pointed out that the Justice Reinvestment Initiative did not die. Several reforms, such as public safety grants, received state funding and have been implemented.

But the JRI's biggest supporters say the program was left in near shambles after the governor's office delayed carrying it out, reversed itself on seeking a federal grant and orchestrated a move to keep former House Speaker Kris Steele, who led the JRI effort, from leading a group overseeing implementation of the initiative.

Steele said he believes a political desire to appear "tough on crime" and pressure from private prison companies ultimately curbed any serious reform efforts.

Throughout the JRI process, Fallin has expressed support for the program and its goals.

The goal of the JRI was to steer nonviolent offenders away from prison, lowering the state's incarceration rates and costs and using the savings to pay for public safety efforts, such as law enforcement grants.

But the planned funding dropped, sentencing alternatives aren't being carried out, fewer pardon and parole officers to monitor offenders were added, and crime-reduction strategy training for local law enforcement agencies didn't occur. The initiative also has no official coordinator.

Renewed focus on the JRI comes after Fallin's office released in late November 2013 – due to media requests – more than 8,000 documents and emails related to the Justice Reinvestment Initiative.

Among the key actions revealed in the emails and visitor logs of the governor's office:

- In January 2013, after failing to get Fallin's preferred candidate named as head of the JRI oversight board, Rebecca Frazier, then Fallin's assistant general counsel, emailed Mullins pointing out that if the state rejected a federal grant for the JRI, the coordinator job wouldn't be funded. Mullins affirmed a "new tack" of rejecting federal funds. Previously, Fallin had supported obtaining the federal grant to fully implement the initiative.

- Fallin's staff played a key role in crafting and pushing legislation that would have done away with the JRI oversight group co-chaired by Steele and Oklahoma County District Attorney David Prater. Steele and Prater resigned from the JRI group in March 2013, expressing frustration at Fallin's office. The legislation ultimately died, leaving no JRI oversight board or coordinator.

- Facing a deadline for bills getting out of committee, Fallin's Chief of Staff Denise Northrup urgently pressed for a vote on the legislation overhauling the oversight group. The email was sent within a few hours after Mullins met with senior officials of private prison company GEO Group. Mullins said the reform initiative was not discussed at the meeting. Northrup was unavailable for comment.

- Five days after Steele's and Prater's

resignations, the political action committee for Corrections Corporation of America made a \$4,000 donation to Fallin's 2014 campaign, putting the committee at the maximum donation amount. A few days later, a lobbyist who represents the company, among other clients, donated \$5,000 to Fallin's campaign. GEO Group had already made donations four days before the session started to 11 legislators, including \$5,000 each to House Speaker T.W. Shannon and Senate Appropriations Committee Chair Clark Jolley.

Nothing in the emails and other records reviewed by Oklahoma Watch states that actions taken by the governor's staff or legislators were done at the request of private prison companies. But the documents show private prison companies communicated with the governor's office specifically about the Justice Reinvestment Initiative.

Messages left with Corrections Corporation of America and GEO Group officials were not returned.

Steele said in an interview that the governor's and attorney general's offices were not seriously committed to the JRI reforms. Emails show Mullins and Chief of Staff Northrup wanted Steele off the JRI group once his term as Speaker of the House ended. He left the House because he was term-limited.

Steele said in an interview that he believed the view of the governor's staff was "that I would be gone in a year and the issue would go away. I think ultimately, that's what they were counting on."

Mullins said instead that in pushing the bill, Fallin's office wanted to see the group overseeing implementation of the JRI reformed and codified into state law so that it had statutory authority and political muscle to implement change in the system.

"It wasn't the committee we needed to get the job done," he said.

## Reforms Win Approval

ON MAY 10, 2012, GOVERNOR FALLIN signed into law House Bill 3052, or the Justice Reinvestment Initiative.

The signing was the culmination of



a more than year-long effort in which Oklahoma sought assistance from the U.S. Department of Justice and the Pew Center on the States to implement a JRI program.

The idea behind the law was to increase the use of sentencing alternatives and other reforms to steer nonviolent offenders away from prison, which would save on prison costs, then reinvest the savings in public safety efforts.

A core JRI oversight group composed of state agency officials and others was to take the next steps, including working with the Council of State Governments to apply for a \$400,000 federal grant.

However, "immediately we began to meet with resistance from the governor's office," Steele said recently. "I think as much as anything, it's the fact that Gov. Fallin's staff had convinced her that she had to be a tough-on-crime, lock-'em-up and throw-away-the-key leader."

Steele said Attorney General Scott Pruitt's and Fallin's offices began to "slow-play" cooperation by refusing to communicate with the Council of State Governments or the JRI oversight group for long periods. Deadlines were missed, he said. The council asked the JRI group if the state still wanted grants to fund the initiative. Pruitt's office was unavailable for comment.

In response, Fallin sent a letter to the Council of State Governments in October 2012 saying that the state was still supportive of the JRI.

"It was a way, I think, to appear supportive," Steele said.

Meanwhile, the governor's office was having doubts about the JRI oversight group, according to Mullins.

Initially, Fallin's office did not have a seat on the JRI group, Mullins said, and the group lacked influential legislative players who could help get reform policies enacted.

"Clearly, we thought that the committee was not well-designed to be an execution committee. It was designed to be an evaluation committee," he stated.

Other issues arose. Frazier, deputy general counsel, wrote in an email that Mullins felt the Council of State Governments was trying to control the process too much.

Fallin's office told two key agency heads – then-Department of Corrections Director Justin Jones and Department of Mental Health and Substance Abuse Services Director Terri White – not to attend any of the meetings, Steele and Mullins said.

Mullins explained to Oklahoma Watch: "We're not going to make our directors of programs take time out of their day to sit in a meeting when we don't know what it's about."

Instead, Frazier was sent on their behalf and was to report back to them.

On January 9, 2013, the JRI group voted, 5-1, to name as coordinator an attorney with the law firm Crowe & Dunlevy. Frazier was the only dissenting vote.

Two days after Governor Fallin's choice was rejected, Frazier emailed Mullins pointing out that in order for the coordinator position to be funded by the federal grant, the money would have to pass through a state agency. "If all of the agencies refuse funds, there will be no way to pass through the coordinator funding," Frazier wrote.

Mullins replied, "Maybe we want to take a new tack." He offered

this language, in an apparent reference to automatic federal budget cuts: "In light of recent attention to targeted budgeted decisions by the federal government, this is not the time for the State to be requesting federal dollars in an expectation of future partnership commitments.... Therefore, Oklahoma is withdrawing its request for an (sic) JRI implementation grant from the United States Department of Justice."

Mullins said in an interview that after Fallin had provided her letter of support for federal JRI grant money, most state agencies and groups due to receive the money decided they didn't need the funding after all.

Previously, directors of two agencies that would play key roles in the JRI – Jones, of the corrections department, and White, of the mental health department – had expressed support for the reform initiative. They also had repeatedly called for more funding of their agencies.

### Private Prison Firms' Interest

BEFORE THE JUSTICE REINVESTMENT Initiative was signed into law in May 2012, private prison companies expressed interest in the program, emails show.

On April 4, 2012, GEO Group lobbyist Brett "Cooper" Robinson sent an email to Frazier and Fallin's policy director, Katie Altshuler, asking them to sit in on a meeting between GEO Group representatives and Northrup.

Representing GEO Group at the meeting were senior vice president John Hurley, regional vice president Reed Smith

## Alexander Byrd Optics

Single Vision Transitions eyeglasses

**\$119.95 + S&H**

with Lifetime Frame Warranty

To receive order form and details write to:

2150 Wise St. #4769

Charlottesville, VA 22905

or have someone go to:

abyrdoptics@gmail.com  
www.abyrdoptics.com

### 2012 Fourth Edition "WINNING HABEAS CORPUS & POST CONVICTION RELIEF", over 620 pages

Cases cited through 638 F.3d. Simply the best book for prisoners who are researching post conviction relief and Ineffective Assistance of Counsel. Habeas Hints, writer & Attorney, **Kent Russell** writes: *Now that I've been turned on to 'Winning Habeas Corpus', I always make sure that it's close at hand.*

- A virtual law library in a single book, actual case quotes.
- Habeas Procedures & Prac. § 2254, 2255 & Rule 60(b).
- Sixth Amendment & IAC, pretrial duty to investigate.
- Recognized defenses, plea bargain process.
- Jury Instructions, sentencing, time bar, & tolling.
- Over 1500 cases cited; 7" x 10" size & 10 pt. font.

**Price for Prisoners only \$58.50**

Send money order or institutional check to:

**Fast Law Publishing Associates**  
P.O. Box 577, Upland, CA 91785  
On-Line Orders: [www.fastlaw.org](http://www.fastlaw.org)

## Weak Reforms in Oklahoma (cont.)

and other company officials. GEO Group operates the Lawton Correctional Facility and is contracted to operate an empty private prison in Hinton.

"We will be discussing per diems (state payments to private prison operators) and realignment of max prisoners from OSP (Oklahoma State Penitentiary)," Robinson wrote. "Would like to hear your thoughts on JRI and future impact on corrections."

Mullins said any talk about the justice initiative during that meeting would have been forwarded to the Department of Corrections.

Avalon Correctional Services, which operates halfway houses on contract with the state, also expressed interest in the JRI as a way to expand its business.

On April 5, 2012, Avalon President Brian Costello sent Corrections Director Justin Jones a letter about the potential need for intermediate sanction or revocation bed space under the JRI. The letter proposed that the department modify its contract with the company or draft a new contract with Avalon to provide intermediate facility space.

On May 10, the day the JRI was signed into law, Jones replied, declining the offer. Avalon officials did not return calls seeking comment.

By July 2012, staff members for Gover-

nor Fallin also were discussing intermediate facilities.

In a July 30 email, Frazier stated that as part of the justice initiative, the Department of Corrections would be moving offenders out of state-run facilities and into GEO Group and Corrections Corporation of America prisons, then using the freed-up space to create intermediate revocation facilities.

Mullins told Oklahoma Watch that the plan to shift prisoners to private prisons under the initiative was proposed by Jones. Jones denies formally proposing such a plan.

### Questions of Oversight

IN THE DAYS LEADING UP TO THE JRI group's vote on a coordinator, House Speaker T.W. Shannon filed House Bill 2042, to alter oversight of the JRI.

Shannon's legislation was a "shell bill," meaning it had no legislative text but served as a placeholder in which a lawmaker can later insert language.

Rep. Jason Murphey began drafting text for the bill and became its author. He told Oklahoma Watch that Shannon's staff brought the JRI group to his attention and said changes needed to be made. Shannon's office did not return calls from Oklahoma Watch seeking comment.

Murphey said because the JRI group was not codified in state law, and thus not subject to state regulations such as the Open Meeting Act, it was important to make sure the group had statutory authority.

On February 14, 2013, Frazier sent an email to several Fallin staffers describing Murphey's thinking about a JRI bill. Mullins suggested using the bill to limit a newly proposed JRI board to two years and allow the governor's office to appoint the chair of the board.

Four days later, Rep. Murphey sent proposed language for the bill to House staff and others to codify the JRI board and give the governor the power to appoint the board's chair, and for the House Speaker and Senate President Pro Tem to appoint other members.

"I suspect that was a way they could ultimately get control and get the outcome they wanted," Steele says.

Meanwhile, Mullins, Frazier and Northrup were discussing the federal grant that would have paid for the JRI coordinator position.

On February 21, Frazier sent an email to the liaison for the Council of State Governments and the JRI oversight group, saying the state was turning down the funds.

Steele responded to Frazier, saying he was "stunned" by the decision.

### Resignations

THE DEATH KNELL FOR THE JRI GROUP came on March 13, 2013 – one day before the group's scheduled meeting and the deadline for bills to be out of committee.

According to Governor Fallin's visitor sign-in sheet, at 9:25 a.m. that day, GEO Group senior vice president John Hurley, regional vice president Reed Smith and GEO Group lobbyist Tonya Lee met with Mullins in the governor's office.

At 11:56 a.m., Northrup emailed Fallin's legislative director Craig Perry with the subject line of "urgent," asking if she could get information on whether House Bill 2042 had made it out of committee.

About a half-hour later, Northrup sent an email about the bill to policy director Altshuler and Alex Weintz, Fallin's communications director, saying, "We need to know and if I need to make a call to make it move I will..."


The bill made it out of committee and passed the House that night. Fallin's office issued a press release thanking the House and reaffirming her commitment to the JRI.

The next morning, Steele and Prater resigned from the JRI group, saying the governor's office had not taken the initiative seriously and had been dishonest. The JRI oversight group disbanded.

HB 2042 was amended slightly and passed by the Senate, but was never heard in conference committee. Mullins said the governor's staff stopped pushing the bill because they didn't think it had enough support.

Five days after the resignations, on March 19, 2013, Corrections Corporation of America's political action committee provided a \$4,000 donation to Governor Fallin's 2014 campaign. Ten days afterward, Fallin's campaign accepted a \$5,000 donation from the company's lobbyist, Tammie Kilpatrick.

Mullins denied that the meetings with private prison officials and the campaign contributions played a role in the decisions and actions surrounding the JRI.



**PASS**  
Prisoner Assistance  
Scholastic Service  
provides educational  
materials nationally to  
prisoners in state and  
federal prisons and jails.

- ◆ Victim Awareness
- ◆ Anger Management
- ◆ Addiction/Substance Abuse
- ◆ Domestic Violence
- ◆ Gang Diversion
- ◆ Conflict Resolution
- ◆ Parenting
- ◆ Non-violent Communication
- ◆ Re-entry in Society
- ◆ Living With Purpose

Prisoners who  
successfully complete  
the PASS program  
earn a degree in  
Personal Psychological  
Development which  
can be used as  
evidence of  
rehabilitation before  
parole boards and  
with prison officials.

**10 COURSES**  
**2 SEMESTERS**

Graded study - completed  
through the mail.

**\$500** for the entire  
course of study and  
degree.

**FOR MORE INFO**

**1-888-670-7277**  
[www.passprogram.org](http://www.passprogram.org)  
[pass@passprogram.org](mailto:pass@passprogram.org)

PASS Program, PO BOX 2009, San Francisco, CA, 94126

"They [campaign donations] have absolutely no influence. None at all," he said.

### Success or Failure?

DESPITE THE CONFLICTS, MULLINS SAID many of the JRI's reforms have been implemented and Governor Fallin's commitment to the Justice Reinvestment Initiative remains strong.

The state mental health department has developed an evaluation tool for judges for alternative sentencing, law enforcement grants are being provided and the corrections department has set up intermediate beds for probation or parole offenders.

But Steele said many of the reforms have not been implemented because they were not adequately funded. Legislative leaders initially agreed in May 2013 to spend \$3.5 million, but that amount was reduced. The Council of State Governments had recommended spending \$6 million in fiscal year 2013 and \$13 million annually beginning in 2014, for a total of \$110 million by 2021.

"I do not think the state of Oklahoma can sustain the current trend," Steele said, "either financially or from a human resource standpoint in relation to the way we deal with corrections and nonviolent offenders within our state." ■

*\* Oklahoma Watch's Lindsay Whelchel contributed to this story.*

*Oklahoma Watch is a nonprofit, nonpartisan journalism organization that produces in-depth and investigative content on important public policy issues facing the state. For more Oklahoma Watch content, visit [www.oklahomawatch.org](http://www.oklahomawatch.org). A longer, more detailed version of this article was published by Oklahoma Watch on December 27, 2013.*

## Failure to Protect New Jersey Jail Detainee Leads to Drastic Bail Reduction

A NEW JERSEY MAN HELD IN JAIL ON charges of aggravated assault had his bail reduced from \$500,000 to \$15,000 after a beating by other prisoners left him confined to a wheelchair.

Joshua A. Maldonado, 20, was assaulted in the Cumberland County Jail in November 2012. After the attack it took about an hour and a half to transport him to the jail's infirmary, then over two hours before he was airlifted to a hospital. Maldonado's injuries were so severe that he remained in a coma for six days.

Caroline Turner, Maldonado's attorney, subsequently moved to have his bail reduced. She argued that jail officials had been negligent in not preventing the attack on her client and that, because he was now wheelchair-bound and unable to protect himself, he could be killed if he remained at the jail.

"More than brutally assaulted," said Turner, Maldonado "was nearly murdered and the jail did little to protect him." She stated she was "truly shocked" by the length of time it took jail officials to get her client to a hospital for treatment.

Turner suggested that it would be prudent to reassign Maldonado to another cell so long as he remained in jail, "to prevent any inmates from coming back and finishing the job."

Walter Slachetka, the prosecutor assigned to the case, objected to Turner's bail-reduction request, suggesting that Maldonado was responsible for the beating he had incurred and claiming that, in any event, he was a flight risk.

"It is unfortunate what happened to Mr. Maldonado, but reducing his bail, allowing him to be released, would be a recipe for disaster," said Slachetka, "[T]his was retaliation from an assault that Mr. Maldonado started and because of the landscape of gang activity I suspect [he] is involved in, I fear retaliatory action might be taken."

At a December 2012 hearing, Cumberland County Superior Court Judge James Swift rejected the prosecution's argument and reduced Maldonado's bail to \$15,000. "My hope is that no one takes any retribution against him while [he is] out, but I do not feel in his present state he will be roaming the streets in his wheelchair," Judge Swift stated.

Maldonado's family expressed gratitude for the ruling. "Just because someone is in jail does not mean they are not entitled to be treated like a human being," said Maldonado's father.

On August 6, 2013, Maldonado was found guilty of weapons and drug-related charges; he was sentenced the following month to serve up to 9 years in prison. ■

Sources: [www.corspecops.com](http://www.corspecops.com), [www.thedailyjournal.com](http://www.thedailyjournal.com)

## Appealing a Conviction? Hire an Appellate Attorney.

Matthew Pinix  
Appellate Attorney



You wouldn't hire a **heart surgeon** to perform **brain surgery**.  
Don't hire a **trial attorney** to handle **your appeal**. Hire someone who focuses on **criminal appeals**.

Hire the **Law Office of Matthew S. Pinix**, a law firm with 10-years' experience handling **criminal appeals** in Wisconsin and Illinois.

Law Office of Matthew S. Pinix, LLC | 1200 East Capitol Drive, Suite 220 | Milwaukee, WI 53211 | (414) 963-6164

## Corcoran Sun

Full Color Prison Yard Monthly  
News ♦ Entertainment ♦ Resources

**3 Month Special Subscription**

**\$5 or 1 Book of FCS**

### COLOR NEW 16 PAGES

Expanded full color format with exciting episodes of thrilling novels and sexy pics. Many how-to articles on writing, art and health. Filled with entertainment: puzzles, trivia, jokes, poetry... Submit your writing, art, poetry etc. See your submission, name and contact info in print.

**Special 1/2 Year Subscription (\$10 or 2 Books FCS)**

**Special Full Year Subscription (\$20 or 4 Books FCS)**

Payments to: Freebird Publishers

Box 541- Dept. BK, North Dighton, MA 02764

Email: [Diane@FreebirdPublishers.com](mailto:Diane@FreebirdPublishers.com)

# Top Texas Judge Breaks the Law but Gets Special Treatment

**S**HARON KELLER IS THE PRESIDING judge of the Texas Court of Criminal Appeals – the state’s highest court for criminal cases. In April 2010, Keller was fined \$100,000 after it was discovered that she had failed to report a total of \$3.8 million in personal earnings and property – not once but twice. On August 19, 2013, following a three-year delay, the fine was reduced to \$25,000. [See: *PLN*, Nov. 2013, p.9].

According to a complaint filed with the Texas Ethics Commission, in 2006 Keller neglected to report from 100 to 499 shares of stock, her interest in eight properties worth \$2.4 million, \$3,760 in expenses covered under the honorarium exception and \$61,500 in personal income.

In 2007, Keller again failed to report the stock, the eight properties (then worth \$2.8 million), two honorarium payments valued at \$6,010 and nine sources of personal income worth \$121,500.

Judge Keller insisted that the omissions were simply unintentional oversights. However, she acknowledged that her actions “constituted violations of her reporting obligations” required by state law.

Keller’s attorney, Joseph Nixon, said that “Judge Keller is very pleased that she was able to reach an agreement with the Ethics Commission to have the matter resolved and have the case dismissed. The settlement is fair for both sides.”

Not everyone agreed.

“We’re disappointed the fine was rolled back by 75 percent,” stated Craig McDonald, executive director of Texans for Public Justice, which had filed the ethics complaint. “We thought the \$100,000 fine sent a message to politicians like Keller that they can’t hide assets from the public and their personal financial statements need to be taken seriously.”

Judge Keller is no stranger to controversy. In 2010 she was reprimanded by the State Commission on Judicial Conduct for “willful or persistent misconduct” that “casts public discredit on the judiciary.”

The reprimand stemmed from an incident that occurred on September 25, 2007 when attorneys representing death row prisoner Michael W. Richard asked the court to remain open long enough to receive a last-minute appeal. Keller denied the request with a flippant retort, stating, “We close at 5 p.m.” Richard’s appeal, based on a

U.S. Supreme Court ruling that temporarily halted other executions, was not filed in time. He was executed later that night. [See: *PLN*, Sept. 2010, p.20; Aug. 2009, p.34].

Judge Keller’s reprimand was eventually dismissed by a special court of review which found that the state constitution did not allow such a reprimand as a disciplinary sanction for judicial misconduct – although the state’s legal code does.

On November 5, 2013, Texas voters approved Proposition 9, which the *Dallas Morning News* said could be called

the “Texas Court of Criminal Appeals Presiding Judge Sharon Keller Disciplinary Case Memorial Amendment.” The measure expanded the types of disciplinary sanctions that can be imposed by the State Commission on Judicial Conduct to include various warnings and reprimands. Proposition 9 was approved by a margin of more than 84%. ■

Sources: *New York Times*, *Houston Chronicle*, [www.texastribune.org](http://www.texastribune.org), [www.burntorangereport.com](http://www.burntorangereport.com), <http://gritsforbreakfast.blogspot.com>

## New York Prisoner Awarded Almost \$16 Million Due to Poor Medical Treatment

by Christopher Zoukis

**I**N MARCH 2012, A NEW YORK STATE prisoner was awarded \$15.7 million after being left a quadriplegic due to inadequate medical care. The judgment was entered by a New York Court of Claims which found that a prison physician had failed to evaluate or order further tests when prisoner Sergio Black’s symptoms dramatically worsened in a short period of time.

“The Court does not find this was merely an error of medical judgment,” wrote Judge Diane L. Fitzpatrick, “but rather deviation from the standard of care.”

Finding the state “100 percent” responsible for Black’s injuries, the judge awarded damages totaling \$15,707,898, including \$3.5 million for pain and suffering.

Black’s medical problems developed after he was injured during a basketball game in June 2006 at the Five Points Correctional Facility. At that time, Black told medical personnel he had collided with another player and “couldn’t move for 30-60 seconds.” Having complained of a “back strain” a few weeks earlier, Black wasn’t seen until July 6, 2006. X-rays taken later that month revealed only common “spurring.”

In November 2006, Black fell during another basketball game and was carried to the prison infirmary, where he was held overnight after complaining of numbness and tingling in his leg. A week later he was seen by Dr. Daniel Weinstock, the Facility Health Services Director. On November 20, 2006, Dr. Weinstock received MRI results which indicated Black was suffering from a chronic

degenerative disc disease that was likely exacerbated by recent trauma. Actually, Black’s medical condition was causing compression of his spinal column – a serious condition that can result in irreparable injury.

Black was given a cane and returned to his housing unit.

On December 7, 2006, still using a cane, Black met with Dr. Weinstock and complained that he was in pain and felt like he was going to black out. Weinstock prescribed Neurontin, an anticonvulsant, as a pain reliever. According to a neurologist who testified at trial, Neurontin would not have alleviated Black’s pain but “only increased the likelihood [Black] would fall and suffer serious injury” due to the medication’s side effect of causing instability.

Finally, on December 18, 2006, Black fell in his cell and injured his head. The following day he underwent emergency surgery to remove parts of his vertebra, implant steel plates and relieve pressure on his spine. He is now confined to a wheelchair as a quadriplegic, with no feeling from the chest down and severely limited use of his arms. He has no control over his bodily functions and is unable to perform sexually.

In her order awarding the \$15.7 million judgment to Black, Judge Fitzpatrick found that Dr. Weinstock’s treatment was “particularly grievous.” Four days before Black’s fall, Weinstock failed to re-evaluate Black’s deteriorating condition and even denied his request for a wheelchair.

Finding that Dr. Weinstock had ig-



nored Black's rapidly worsening symptoms and "put his case on the back burner," Judge Fitzpatrick held Weinstock's treatment – or lack of same – increased the likelihood that Black would suffer injury. The court rejected the state's claim that Dr. Weinstock's malfeasance was "merely an error of judgment," noting that "he prescribed a drug with side effects that can cause clumsiness and uncoordination in a man already unsteady on his feet." Further, delays in sending Black to a neurologist for further evaluation, when Dr. Weinstock was alerted to a serious medical issue, were "solely attributable to [the state's] failure to recognize the urgency and risks of [Black's] condition."

As Black was incarcerated under the custody of the state, he "could not seek a second opinion or pursue other treatment options." Under such circumstances, Judge Fitzpatrick held, significant damages were warranted. Black was represented by the law firm of Franzblau Dratch, PC. See: *Black v. State of New York*, New York State Court of Claims, Claim No. 115567, UID 2012-018-305.

Following the March 30, 2012 judgment, Black applied for medical or

compassionate parole under recently-expanded state eligibility rules, which allowed for early release for certain chronically ill prisoners. However, his application was denied because the parole board found he had "no remorse" for his crime of conviction.

Black was released on regular parole on November 1, 2013 and died four days later. According to one of Black's attorneys, Stephen Dratch, the state has appealed the \$15.7 million judgment and the appeal remains pending. Even if the judgment is affirmed on appeal, it will be significantly reduced because the amounts awarded for future medical care and future pain and suffering are no longer applicable due to Black's death.

A search of the online database for the New York State Department of Health's Office of Professional Medical Conduct found that no disciplinary action was taken against Dr. Weinstock for his failure to provide adequate treatment to Black, which resulted in his serious injuries that may have contributed to his eventual death. ■

Additional sources: [www.corspecops.com](http://www.corspecops.com), *New York Times*, [www.syracuse.com](http://www.syracuse.com)

# STRENGTH STACK52

114 BODYWEIGHT EXERCISE CARDS INSIDE!

**JUST \$21.95!\***  
(shipping included)

**Experience the Game of Fit!**

Send money orders or institutional checks made payable to:  
Prisoner Assistant  
Po Box 704  
Lake Harmony PA 18624

**Features:**  
-Soft cover book with perforated-card stock for playing cards.  
-Many fitness games available.  
-Effective NEW bodyweight training system.  
-Exercise your entire body with no equipment.



## ~ THE SENZA COLLECTION ~

SENZA SPECIALIZES IN PROVIDING YOU SEVERAL CHOICES  
ALL NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY – OR – NON NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY  
WE HAVE DIVIDED OUR CATALOGS INTO THESE CATEGORIES:

### CAUCASIN/AFRICAN-AMERICAN/HISPANIC/ASIAN/MIXED HOTTIES

EACH PAGE OF OUR CATALOGS HAS 99 GLORIOUSLY SEDUCTIVE LADIES POSING JUST FOR YOUR ENJOYMENT.

OVER 250 CATALOGS TO COLLECT AT JUST \$2.50 PER CATALOG

HERE'S A LITTLE FREEBIE FROM SENZA TO YOU!!!

ORDER YOUR FREE SENZA "99 HOTTIES" SAMPLE CATALOG

JUST SEND US A SELF ADDRESSED STAMPED ENVELOPE TO:

**SENZA**  
FREE CATALOG OFFER  
**P.O. BOX 5840**  
**BALTIMORE, MD 21282**

**AND FOR THOSE THAT JUST CANNOT WAIT...TAKE ADVANTAGE OF THIS LIMITED TIME OFFER**

### SENZA'S INTRODUCTORY SPECIAL \*\*\*DIRTY DOZEN\*\*\*

\$19.99 GETS YOU ALL THIS + FREE SHIPPING AND HANDLING  
12 EYE POPPING CATALOGS! EACH CATALOG HAS 99 PICS TO CHOOSE FROM ON EACH PAGE  
PLUS

12 4X6 PRINTS FROM OUR MIXED HOTTIES SELECTION TO SHOW OFF SENZA'S 4X6'S PRINT QUALITY.

**ALL FOR JUST \$19.99**

**REMEMBER YOU MUST: SPECIFY NUDE OR NON-NUDE ON YOUR ORDER**  
**SPECIFY YOUR INSTITUTIONS RESTRICTIONS AS TO THE NUMBER OF PRINTS ALLOWED IN ONE ENVELOPE.**

**SENZA CORPORATE POLICIES – PLEASE REVIEW THEM CAREFULLY**

**ALL SENZA COLLECTION IMAGES ARE SOLD AT A FLAT PRICE OF 0.35 CENTS EACH.**

ANYONE WISHING TO PURCHASE 1000 + PRINTS AT ONE TIME WILL BE GIVEN A FLAT PRICE OF 0.30 CENTS PER IMAGE.

**SENZA HAS A MINIMUM ORDER REQUIREMENT OF: \$15.00 THIS DOESN'T INCLUDE S&H CHARGES.**

**SHIPPING AND HANDLING CHARGES ARE AS FOLLOWS:**

**1 – 5 4x6 PRINTS – \$1.00 PER ENVELOPE / 6 – 15 4x6 PRINTS – \$1.50 PER ENVELOPE / 16 – 25 4x6 PRINTS – \$2.00 PER ENVELOPE**

YOU MUST NOTIFY SENZA ON THE ORDER FORM, THE MAXIMUM NUMBER OF PRINTS YOUR INSTITUTION WILL PERMIT IN EACH ENVELOPE

**SENZA WILL ACCEPT U.S. FIRST CLASS POSTAGE STAMPS AT THE RATE OF \$5.00 FOR EACH BRAND NEW FLAT BOOK OF 20 STAMPS.**

YOU ARE REQUIRED TO KNOW YOUR INSTITUTIONS POLICIES REGARDING WHAT IMAGES ARE ACCEPTABLE INTO YOUR FACILITY INSTITUTION. THERE ARE NO EXCEPTIONS TO THIS POLICY. RETURNED/REJECTED MAIL – YOU WILL HAVE 15 BUSINESS DAYS TO SEND US A SASE WITH A STREET ADDRESS IN WHICH TO MAIL YOUR RETURNED/REJECTED PRINTS.

AFTER 15 DAYS THE PRINTS ARE RETURNED TO OUR INVENTORY.

ALL SALES ARE FINAL/NO REFUNDS OR EXCHANGES

# Study Finds Prisoners Inappropriately Using Topical Antibiotics

by David M. Reutter

**R**ESearch INTO THE USE OF TOPICAL antibiotics in correctional facilities found that prisoners frequently use antibiotics for reasons inconsistent with their recommended purpose.

A two-year study of 822 New York state prisoners was presented at the 39<sup>th</sup> Annual Educational Conference and International Meeting of the Association for Professionals in Infection Control and Epidemiology (APIC). Of the 421 male and 401 female prisoners in maximum-security facilities who participated in the study, 59% of the men and 40% of the women reported they had used topical antibiotics – ointments such as Bacitracin and Neosporin – within the previous six months.

Those prisoners who had used antibiotics reported using them inappropriately in the following ways: as a lotion for dry skin, 29% of men and 28% of women; as a lip balm, 18% of men and 15% of women; as hair grease, 8% of men and 3% of women; and for shaving, 6% of men.

Misuse of antibiotics can lead to the development of antimicrobial resistance, resulting in multidrug resistant organisms such as methicillin-resistant *Staphylococcus aureus* (MRSA). Multidrug resistant organisms cause a significant number of serious infections that are more difficult to treat because there are fewer – and in some cases no – antibiotics that will cure them.

“We don’t know specifically whether the overuse of topical antibiotics would lead to MRSA – we don’t have the data to demonstrate that – but in many cases, in general, the overuse and misuse of an-

tibiotics can lead to antibiotic resistance,” said Carolyn Herzig, a Ph.D. candidate at Columbia University in New York City, who led the research team.

“Alternative products, such as lotion and ointments that do not contain antibiotics, are available to inmates, so this comes down to more awareness and better education for this group of people,” she added.

The misuse of topical antibiotics by prisoners is partly linked to policies that restrict the types of hygiene products available in prisons and jails. “Facility medical personnel dispense antibiotic creams and ointments, like foot gels, to inmates on an as needed basis,” said Robin Campbell, a spokesman for the New York City Department of Corrections. “Although inmates may purchase some personal hygiene products, like shampoo, toothpaste and deodorant, from the facility commissary,

shaving cream, lip balm and hair gel are prohibited due to security concerns.”

Herzig noted that some prisoners had also reported using topical antibiotics for appropriate reasons, including to treat injuries and for skin conditions such as eczema, certain fungal infections and new tattoos.

“Ms. Herzig’s research highlights the need for education of all audiences about the prudent use of antibiotics, since multidrug resistant organisms pose significant risk to patient safety in many different settings, including correctional facilities,” stated APIC past president Michelle Farber.

The study, which was funded by the National Institute of Allergy and Infectious Diseases, concluded that interventions are warranted to reduce the inappropriate use of topical antibiotics among prisoners. ■

Sources: [www.apic.org](http://www.apic.org), [www.nbcnews.com](http://www.nbcnews.com)

## Director of Victims’ Rights Group Sent to Prison for Embezzlement

**A**PENNSYLVANIA FEDERAL DISTRICT Court has sentenced a woman to two years in prison for stealing money from a victims’ rights organization she headed.

Between June 2006 and June 2008, Mary Beth Semerod, now 59, stole \$205,883.52 from the Rape & Victim Assistance Center in Schuylkill County while she served as the Center’s executive director. Semerod was dismissed from her position in October 2008 and the Center closed in 2009. She reportedly used the embezzled funds to pay department store bills.

A federal grand jury indicted Semerod in October 2010 on a charge of theft from a program that receives federal funding; she pleaded guilty in November 2011 and was sentenced on June 6, 2012.

“There are no good reasons, ever, that can justify” her behavior, Semerod told the court. “I affected the lives of people whom I loved. I am sorry that these actions ... caused these kinds of pain.”

While her attorney sought a non-prison sentence, the prosecutor argued that incarceration was warranted because the crime played a significant role in the closure of the Center.

“This was an embezzlement scheme that happened over the course of a couple years. It was not a single occurrence. It was committed with planning and it was not of limited duration. It was very serious,” said Assistant U.S. Attorney John C. Gurganus, Jr. “There has to be punishment for it. There has to be deterrence. We submit that a sentence of probation would not reflect the seriousness of the offense.”

U.S. District Court Judge Edwin M. Kosik agreed. “What’s right is right and has to be done,” he stated when sentencing Semerod to 24 months in federal prison and two years of supervised release. He also ordered her to pay restitution of \$205,883.52.

“It’s a tragic situation,” said Semerod’s attorney, Assistant Federal Public Defender Herverly Young.

Semerod is currently in a residential reentry center with a scheduled release date of June 13, 2014. While incarcerated she has been making restitution payments of \$25 per month. ■

Sources: [www.republicanherald.com](http://www.republicanherald.com), U.S. Attorney’s Office press release

### TEXAS ONLY

Post-conviction State and  
Federal Habeas Corpus  
Parole Representation  
Family Law

#### Ashley Burleson

Attorney and Counselor at Law  
1001 Texas Avenue, Suite 1400  
Houston, Texas 77002

# WELCOME TO KRASNYA BABES & KRASNYA STUDS WORLD

**TENS OF THOUSANDS OF THE HOTTEST AND MOST SCANDALOUS BABES&DUDES FOUND ON THE PLANET.  
EACH CATALOG PAGE HAS 120 BEAUTIFUL GIRLS OR BOYS POSING JUST FOR YOU!  
ORDER ONE CATALOG PAGE FOR ONLY \$4.50 OR FOR 10 U.S. FOREVER STAMPS WITH AN SASE ENCLOSED.  
WE WILL SEND YOU VOLUME ONE. EACH ADDITIONAL VOLUME THE SAME PRICE!**

**HELP US TO HELP YOU!**

**WE ARE MORE THAN HAPPY TO ANSWER E-MAIL INQUIRES HOWEVER, DUE TO MAILING COST AT \$0.46 CENTS  
A LETTER, PLEASE ENCLOSE AN SASE WITH YOUR QUESTIONS, OTHERWISE NO REPLIES!**

**WHAT ABOUT OUR PRICES AND POLICIES**

**COLOR PRINTS ON 4x6 GLOSSY PHOTO PAPER AS LOW AS \$0.35 CENTS PER PRINT ON ORDERS OVER 500  
SHIPPED ACCORDING TO POLICY: 25 PICTURES PER ENVELOPE EVERY 24 HOURS. S&H \$2.00 PER ENVELOPE.**

**METHOD OF PAYMENT/CONTACT INFORMATION**

**U.S. POSTAL SERVICE MONEY ORDERS-STATE & FEDERAL CORRECTIONAL INSTITUTIONAL CHECKS**

**PAYABLE ONLY TO: KRASNYA L.L.C.**

**EQUATION FOR FIRST CLASS U.S. FOREVER STAMPS**

**BRAND NEW FLAT BOOK FOR ALL ORDERS AT THE RATE OF \$6.00 PER FLAT BOOK.**

**WE RESPOND TO OUR CLIENTS NEEDS AND TRY TO HELP THE BEST WE CAN.**

**OUR SEASONAL SPECIALS MEAN A KICKOFF OF SAVINGS!**

**COLOR CATALOG DISCOUNT SALE  
ONE COLOR CATALOG OF 120 BABES  
IN CLASSIC OR NUDE LINES \$4.50**

**PLEASE INCLUDE**

**A SELF-ADDRESSED STAMPED  
(2-FIRST CLASS STAMPS) ENVELOPE.**

**QUANTITY BUYS:**

5-14 CATALOGS =10% OFF OUR REGULAR PRICE  
15 CATALOGS =15% OFF OUR REGULAR PRICE  
20 CATALOGS =20% OFF OUR REGULAR PRICE  
25 CATALOGS =25% OFF OUR REGULAR PRICE  
30 CATALOGS =30% OFF OUR REGULAR PRICE  
35 CATALOGS =35% OFF OUR REGULAR PRICE  
40 CATALOGS =40% OFF OUR REGULAR PRICE  
45 CATALOGS =45% OFF OUR REGULAR PRICE  
50 CATALOGS =50% OFF OUR REGULAR PRICE  
BE SURE TO SPECIFY CLASSIC OR NUDE BABES!

150 VOL. OF KRASNYA BABES CLASSIC LINE  
150 VOLUMES OF KRASNYA BABES NUDE LINE

**\$24.95 S&H FREE  
FOR GRAB BAG OF  
50 PHOTOS**

**FROM ALL OUR CATALOGS  
SPECIFY RACE AND MAIN  
AREA OF YOUR INTERESTS  
WE WILL PICK SELECTION  
FOR YOU  
BONUS 1 COLOR CATALOG  
PAGE OF 120 BABES**

**LOOSE STAMPS FOR LOOSE BABES**

**KRASNYA LOOSE STAMP GRAB BAG SPECIAL**

10 LOOSE BABES.....30 STAMPS  
25 LOOSE BABES.....75 STAMPS  
50 LOOSE BABES.....150 STAMPS

**ALL STAMPS MUST BE 1ST CLASS STAMPS  
IN LIKE NEW CONDITION!**

**SPECIFY NUDE OR BOP-SAFE (NO VISIBLE NUDITY)  
WE WILL PICK SELECTION FOR YOU**

**KRASNYA BABES HAS SPRUNG SALE!**

**FREE SAMPLE CATALOG FROM KRASNYA!  
120 BABES IN EACH CATALOG**

**ENCLOSE ONE SASE WITH TWO FIRST  
CLASS STAMPS! 1 CAT PER CUSTOMER  
PLEASE SPECIFY MALE OR FEMALE BABES  
NUDE OR BOP-FRIENDLY**

**3 BRAND NEW FLAT BOOKS OF FOREVER  
STAMPS FOR GRAB BAG OF 45 PHOTOS  
FROM ALL OUR CATALOGS. SPECIFY RACE  
AND MAIN AREA OF YOUR INTERESTS  
WE WILL PICK SELECTION FOR YOU  
BONUS 1 COLOR CATALOG OF 120 BABES  
PLEASE INCLUDE 6 FOREVER STAMPS  
WITH YOUR ORDER FOR S&H**

**KRASNYA L.L.C.**

**P.O. BOX 32082**

**BALTIMORE, MD 21282**

**EMAIL AND CORRLINKS REQUESTS ACCEPTED AT:  
KRASNYABABES@HOTMAIL.COM**

**WE'D LIKE TO START THE HOLIDAYS RIGHT THIS YEAR!  
THE WAY TO DO THAT IS BY SENDING YOU INCREDIBLE VALUES  
IT'S ONE THING TO TALK THE TALK, ANOTHER TO WALK THE TALK**

50 GREAT BABES 0.50 CENTS EACH!—\$25.00  
100 GREAT BABES 0.45 CENTS EACH!—\$45.00  
200 GREAT BABES 0.40 CENTS EACH!—\$80.00  
300 GREAT BABES 0.40 CENTS EACH!—\$120.00  
500 GREAT BABES 0.35 CENTS EACH!—\$175.00

**STANDARD TERMS & CONDITIONS APPLY – \$2.00  
PER ENVELOPE (25 PHOTO) FOR SHIPPING AND HANDLING!**

**WAIT!**

**YOU SAY YOU DON'T HAVE ENOUGH BABE CHOICES  
OR CATALOGS? YOU NEED CATALOGS?  
PREPAY YOUR ORDER AND WE WILL SEND YOU  
FREE COLOR CATALOGS!  
GREAT DEAL, BUT HOW MANY CATALOGS?**

**FOR EVERY 100 BABES WE'LL SEND YOU  
240 BABES TO CHOOSE FROM!**

**ORDER**

50 BABES.....ONE SINGLE CATALOG  
100 BABES.....ONE DOUBLE CATALOG  
200 BABES.....TWO DOUBLE CATALOGS  
300 BABES.....THREE DOUBLE CATALOGS  
500 BABES.....FIVE DOUBLE CATALOGS

**KRASNYA IS PROUD TO INTRODUCE AT FANTASTIC INTRODUCTORY PRICES  
THE CONNOISSEUR'S COUTURE "CACHE TWO-FIVE COLLECTION"  
OF INTERNATIONAL ADULT FILM STARS**

**TWELVE PACKAGES OF 25 NUDE AND NON-NUDE POSES,  
AVAILABLE ONLY IN OUR "CACHE TWO-FIVE" COLLECTION.**

**"CACHE TWO-FIVE"**

**"CACHE TWO-FIVE" IS AVAILABLE IN TWELVE (12) SPECIALLY PRICED PACKAGES  
OF 25 POSES IN NUDE AND NON-NUDE POSES.**

**PLEASE SPECIFY ON YOUR ORDERS IF YOU WANT NUDE OR NON-NUDE PACKAGES  
AND WHAT COLLECTION NUMBER YOU'D LIKE.**

**COLLECTIONS ARE NUMBERED 01-12 FOR EXAMPLE ON YOUR ORDER YOU'D WRITE:**

**\*\*\*NUDE CACHE TWO-FIVE PACKAGE 01 & 02\*\*\***

**REMEMBER THERE ARE TWELVE (12) COMPLETELY DIFFERENT PACKAGES OF 25 BABES,  
THERE ARE NO DUPLICATES IN ANY OF THE 12 PACKAGES.**

**600 BEGUILING BEAUTIES, ALL BRAND NEW ADDITIONS TO OUR LINE AND AVAILABLE ONLY  
IN OUR CACHE "TWO-FIVE" PACKAGES! 300 NUDES AND 300 NON-NUDE BEAUTIES  
CAPTURE YOUR OWN COLLECTION OF KRASNYA'S "CACHE TWO-FIVE" SELECTIONS IN  
INDIVIDUALIZED PACKAGING OF 25 RARE AND EXQUISITE BREATH-TAKING BEAUTIES.**

**THE CONNOISSEUR'S COUTURE COLLECTION OF "CACHE TWO-FIVE" BRINGS YOU  
25 BEAUTIES IN EACH "CACHE TWO-FIVE" PACKAGE FOR ONLY \$12.95 PER PACKAGE**

**LIMITED TIME SPECIAL \*\*\*\*\* \$59.95\*\*\*\*\***

**PLUS S&H FOR 6 "CACHE TWO-FIVE" PACKAGES OF THE NUDE OR NON-NUDE COLLECTIONS  
150 BEAUTIES**

**IMAGINE 150 OF THESE EXCITING AND EXQUISITE BEAUTIES  
FOR A RIDICULOUSLY LOW PRICE OF**

**\*\*\*\*\*\$59.95\*\*\*\*\* PLUS \$12.00 SHIPPING AND HANDLING CHARGE.**

**ADD \$2.00 FOR SHIPPING AND HANDLING PER "CACHE TWO-FIVE" PACKAGE ORDERED.**

**YOU MUST SPECIFY NUDE OR NON-NUDE PACKAGES**

**IF NOT SPECIFIED NON-NUDE WILL BE SHIPPED AUTOMATICALLY**

**ALL OF OUR NORMAL POLICIES APPLY**

**FOR KRASNYA CLIENTS WHO WORK THE YARDS;  
HAVE WE GOT A GREAT OPPORTUNITY FOR YOU...GRAB BAG  
MR. HUSTLE GRAB BAG BARGAIN DAYS**

**ONLY \$0.25 CENTS PER BABE**

**5 GRAB BAG MINIMUM PURCHASE REQUIRED  
\$2.00 SHIPPING AND HANDLING PER BAG**

**25 AWESOME BABES PER BAG AT ONLY \$6.25 PER BAG  
YOU MUST BUY AT LEAST 5 GRAB BAGS OR 50 GRAB BAGS.  
THIS\*\*\*GRAB BAG BARGAIN\*\*\* IS NOT GOING TO BE OFFERED  
AGAIN THIS YEAR. *SO STOCK UP NOW!***

**AS YOU KNOW YOU GET AN ARRAY OF 25 GORGEOUS BABES  
YOU CAN ONLY CHOOSE EITHER MALES OR FEMALES,  
ALL NUDES OR BOP SAFE...THE INDIVIDUAL SELECTIONS COME  
FROM OUR BEST CATALOGS!!!**

**YOU MAY WANT TO SIT DOWN FOR THIS BONUS BARGAIN!  
OUR BABES CATALOGS SPECIAL OF THE DECADE**

— 5 COLOR CATALOGS FOR \$6.00 —  
— 10 COLOR CATALOGS FOR \$12.00 —  
— 15 COLOR CATALOGS FOR \$18.00 —  
— 20 COLOR CATALOGS FOR \$24.00 —

**OUR CATALOGS SPECIAL AVAILABLE WHEN YOU PURCHASE  
THE 5 GRAB BAG MINIMUM!**

**THIS PRICE INCLUDES FREE SHIPPING ON THE CATALOGS  
BECAUSE OF SHIPPING TERMS ALL CATALOGS SOLD IN  
MULTIPLES OF 5 FOR \$6.00 ONLY.**

**YOU CHOOSE EITHER MALE OR FEMALE CATALOGS  
AND IF YOU WANT NUDE OR BOP SAFE!!**

# PLN Challenges Postcard-only Policy at Florida Jail

ON DECEMBER 17, 2013, PRISON LEGAL News filed suit in federal court against St. Lucie County, Florida Sheriff Ken J. Mascara; the lawsuit alleges unconstitutional censorship based on a policy at the county jail that prohibits prisoners from receiving letters, books and magazines. Aside from legal mail, the policy dictates that nothing but postcards will be delivered to prisoners, without notifying the senders about their right to challenge such censorship.

PLN filed suit after dozens of issues of its monthly publication, as well as subscription brochures and books, including a paperback book entitled *Protecting Your Health and Safety*, were rejected by St. Lucie County jail officials, who failed to provide PLN an opportunity to appeal the rejections.

According to PLN's complaint, pursuant to the jail's mail policy adopted in 2010, "Magazines, paperback or hardcover books (i.e. novels) cannot be received through the mail." Some of the publications, brochures and books sent to prisoners by PLN and rejected by jail staff were returned marked "Postcards Only" and "Return to Sender."

"Most people held in jail are awaiting trial and thus are presumed innocent," observed PLN editor Paul Wright, who also serves as executive director of the Human Rights Defense Center (HRDC). "Government officials cannot constitutionally prohibit prisoners from receiving letters, books and other publications, and cannot constitutionally prevent people outside jail, including publishers, from communicating with those who are incarcerated," he said. "The last time I checked, the First Amendment did not include an exception for St. Lucie County."

"Being able to receive letters, books and magazines is critical to someone who is incarcerated," added Dante Trevisani, an attorney with the Florida Justice Institute, which represents Prison Legal News in the lawsuit.

PLN is seeking declaratory and injunctive relief, as well as nominal and compensatory damages "for the violation of PLN's First and Fourteenth Amendment rights, the failure to deliver PLN's materials, the failure to provide PLN with constitutionally required notice and an opportunity to be heard, the impediment of PLN's ability to disseminate its political message, the frustration of PLN's

organizational mission, the diversion of PLN's resources, PLN's loss of potential subscribers and customers, PLN's inability to recruit new subscribers and supporters, PLN's loss of reputation, PLN's printing, handling and mailing costs, costs of staff time, and other damages to be proven at trial," plus attorneys' fees and costs.

Prison Legal News has successfully challenged postcard-only policies and other forms of censorship at jails in other jurisdictions, including in Berkeley County, South Carolina; Fulton County, Georgia; and Shawnee County, Kansas. [See: *PLN*, Feb. 2012, p.14; Oct. 2011, p.41; June 2010, p.32]. As recently as September 30, 2013, a federal court entered a preliminary injunction in a censorship lawsuit filed by PLN against the Upshur County Jail in Texas, and on April

24, 2013 a federal court in Oregon entered judgment for PLN in a suit challenging a postcard-only policy at the Columbia County Jail. [See: *PLN*, June 2013, p.42].

The Florida Justice Institute, a public interest law firm, has successfully challenged postcard-only policies in Florida at the Flagler and Santa Rosa County jails [see: *PLN*, Nov. 2012, p.32], and has prevailed in a number of other First Amendment cases against other county jails and the Florida Department of Corrections.

PLN is represented by attorneys Randall C. Berg, Jr. and Dante P. Trevisani with the Florida Justice Institute, HRDC general counsel Lance Weber and HRDC staff attorney Robert Jack. See: *Prison Legal News v. Mascara*, U.S.D.C. (S.D. Fla.), Case No. 2:13-cv-14481. ■

## Connecticut Guards File Grievances over Efforts to Stem Super Bowl Absenteeism

CONNECTICUT PRISON GUARDS FILED almost 100 grievances over temporary changes in work rules intended to reduce the number of guards calling in sick on Super Bowl XLVI, which pitted the New York Giants against the New England Patriots.

According to then-Department of Correction Commissioner Leo Arnone, requiring guards to produce a doctor's note for a one-day absence successfully reduced the number of Super Bowl absentees to around 100, which is normal for any given day.

In past years, heavy Super Bowl absenteeism had caused the DOC to take extraordinary measures – including paying overtime to cover for absent guards and placing over a third of the state prison system's 16 facilities on full or partial lockdown due to staffing shortages. Either option cost the state extra money.

The guards who filed grievances argued that the new rule related to doctor's orders violated their contract. DOC spokesman Brian Garnett said the department worked with the guards' union and the changes were so successful that only two prisons were placed on lockdown in 2012.

"This was done with the cooperation of the unions, and we tried to work very cooperatively," said Garnett. "This wasn't all a 'stick' approach. There was a 'carrot,' too."

But union officials had a hard time

finding the carrot. According to Luke Leone, president of AFSCME Local 1565, which represents about half of the state's 5,000 prison guards, DOC officials requiring a doctor's note for a single day of sick call violated the union's contract, which permits up to four consecutive sick call days before a doctor's note must be produced.

It sounds like the Connecticut prison system treats its guards as it does prisoners – rules are subject to change without notice and do not apply to officials in charge.

As for Superbowl XLVI, the Giants won with a score of 21 to 17. There were no reports of problems regarding Connecticut prison guard absenteeism for Super Bowl XLVII, in which the Baltimore Ravens defeated the San Francisco 49ers, 34-31. ■

Sources: *Hartford Courant*; *Stamford Advocate*, [www.ctpost.com](http://www.ctpost.com)

### Writing to Win

Need to write better? *Writing to Win* will teach you the basics of how to compose clear and convincing written and oral legal arguments! 270 pages packed with solid, practical advice and tips.

\$19.95 from PLN's Book Store!

See page 61 for more information.





Stay in touch with a good Magazine!

# Get 5 Full One Year Subscriptions - **ONLY \$20!**

+ \$3.99 p/h

**"BEST DEAL ON THE POUND!"**

Check your **5** magazines  
and underline three backup choices (in case of unavailability)

- |                                                             |                                                            |                                                        |
|-------------------------------------------------------------|------------------------------------------------------------|--------------------------------------------------------|
| <input type="checkbox"/> 4 WHEEL DRIVE & SPORT UTILITY (12) | <input type="checkbox"/> FLEX (12)                         | <input type="checkbox"/> PLANE & PILOT (12) NR*        |
| <input type="checkbox"/> ALLURE (12)                        | <input type="checkbox"/> FLORIDA SPORT FISHING (6)         | <input type="checkbox"/> POPULAR PHOTOGRAPHY (12)      |
| <input type="checkbox"/> AMERICAN PHOTO (6)                 | <input type="checkbox"/> FLYING (12)                       | <input type="checkbox"/> POPULAR SCIENCE (12)          |
| <input type="checkbox"/> ARTHRITIS TODAY (6)                | <input type="checkbox"/> FOUR WHEEL & OFF ROAD (12)        | <input type="checkbox"/> PREDATOR EXTREME (6)          |
| <input type="checkbox"/> AUTOMOBILE (12)                    | <input type="checkbox"/> FOUR WHEELER (12)                 | <input type="checkbox"/> PREVENTION (12)               |
| <input type="checkbox"/> BACKPACKER (9)                     | <input type="checkbox"/> FREESKIER (6)                     | <input type="checkbox"/> RED BULLETIN MAGAZINE (12)    |
| <input type="checkbox"/> BETTER HOMES & GARDENS (12)        | <input type="checkbox"/> GLAMOUR (12)                      | <input type="checkbox"/> REDBOOK (12)                  |
| <input type="checkbox"/> BICYCLING (11)                     | <input type="checkbox"/> GOLF DIGEST (12)                  | <input type="checkbox"/> ROAD & TRACK (10)             |
| <input type="checkbox"/> BLACK ENTERPRISE (12)              | <input type="checkbox"/> GOLF TIPS (7)                     | <input type="checkbox"/> SAVEUR (9)                    |
| <input type="checkbox"/> BOATING (10)                       | <input type="checkbox"/> GOLFWEEK (40)                     | <input type="checkbox"/> PARENT & CHILD (8)            |
| <input type="checkbox"/> BON APPETIT (12)                   | <input type="checkbox"/> HARPERS BAZAAR (10)               | <input type="checkbox"/> SELF (12)                     |
| <input type="checkbox"/> BOWHUNT AMERICA (6)                | <input type="checkbox"/> HOT BIKE (12)                     | <input type="checkbox"/> SEVENTEEN (10)                |
| <input type="checkbox"/> BOWHUNTING WORLD (9)               | <input type="checkbox"/> HOT ROD (12)                      | <input type="checkbox"/> SHAPE (12)                    |
| <input type="checkbox"/> BRIDAL GUIDE (6)                   | <input type="checkbox"/> HOUR DETROIT (12)                 | <input type="checkbox"/> SIEMPRE MUJER (6)             |
| <input type="checkbox"/> CABELA'S OUTFITTER JOURNAL (6)     | <input type="checkbox"/> HOUSE BEAUTIFUL (10)              | <input type="checkbox"/> SKI MAGAZINE (6)              |
| <input type="checkbox"/> CAR & DRIVER (12)                  | <input type="checkbox"/> INC (12)                          | <input type="checkbox"/> SLAM (10)                     |
| <input type="checkbox"/> CAR CRAFT (12)                     | <input type="checkbox"/> INSTRUCTOR K - 8 (6)              | <input type="checkbox"/> SNOWBOARD (4)                 |
| <input type="checkbox"/> CBS WATCH! MAGAZINE (6)            | <input type="checkbox"/> ISLANDS MAGAZINE (8)              | <input type="checkbox"/> SNOWBOARDER (6)               |
| <input type="checkbox"/> CHARISMA (12)                      | <input type="checkbox"/> JET (20)                          | <input type="checkbox"/> SPORT RIDER (10)              |
| <input type="checkbox"/> CHEVY HIGH PERFORMANCE (12)        | <input type="checkbox"/> LADIES HOME JOURNAL (10)          | <input type="checkbox"/> SUPER CHEVY (12)              |
| <input type="checkbox"/> CIRCLE TRACK (12)                  | <input type="checkbox"/> LATINA (10)                       | <input type="checkbox"/> SURFER (12)                   |
| <input type="checkbox"/> COMPLEX MAGAZINE (6)               | <input type="checkbox"/> LOG HOME LIVING (9)               | <input type="checkbox"/> TAMPA BAY MAGAZINE (6)        |
| <input type="checkbox"/> CONDE NAST TRAVELER (12)           | <input type="checkbox"/> LUCKY (10)                        | <input type="checkbox"/> TEEN VOGUE (10)               |
| <input type="checkbox"/> CRUISING WORLD (12)                | <input type="checkbox"/> MARIE CLAIRE (12)                 | <input type="checkbox"/> TENNIS (6)                    |
| <input type="checkbox"/> CYCLE WORLD (12)                   | <input type="checkbox"/> MEN'S FITNESS (10)                | <input type="checkbox"/> THE ATLANTIC MONTHLY (10)     |
| <input type="checkbox"/> DETAILS - FASHION (10)             | <input type="checkbox"/> MEN'S JOURNAL (12)                | <input type="checkbox"/> TIMBER HOME LIVING (6)        |
| <input type="checkbox"/> DETROIT HOME (6)                   | <input type="checkbox"/> MIDWEST LIVING (6)                | <input type="checkbox"/> TRANSWORLD MOTOCROSS (12)     |
| <input type="checkbox"/> DIGITAL PHOTO (7)                  | <input type="checkbox"/> MINISTRY TODAY (6)                | <input type="checkbox"/> TRANSWORLD SKATEBOARDING (12) |
| <input type="checkbox"/> DIRT RIDER (12)                    | <input type="checkbox"/> MORE (10)                         | <input type="checkbox"/> TRANSWORLD SNOWBOARDING (8)   |
| <input type="checkbox"/> EBONY (11)                         | <input type="checkbox"/> MOTOR TREND (12)                  | <input type="checkbox"/> TRUCKIN (13)                  |
| <input type="checkbox"/> ELLE DECOR (10)                    | <input type="checkbox"/> MOTORCYCLIST (12)                 | <input type="checkbox"/> UPTOWN (6)                    |
| <input type="checkbox"/> ENTREPRENEUR (12)                  | <input type="checkbox"/> MUSCLE & FITNESS (12)             | <input type="checkbox"/> UPTOWN MAGAZINE (6)           |
| <input type="checkbox"/> ESPN MAGAZINE (26)                 | <input type="checkbox"/> MUSCLE MUSTANGS & FAST FORDS (12) | <input type="checkbox"/> W MAGAZINE (10)               |
| <input type="checkbox"/> ESQUIRE (11)                       | <input type="checkbox"/> NYLON GUYS (6)                    | <input type="checkbox"/> WATERFOWL & RETRIEVER (2)     |
| <input type="checkbox"/> EVERY DAY WITH RACHAEL RAY (10)    | <input type="checkbox"/> NYLON MAGAZINE (10)               | <input type="checkbox"/> WEIGHT WATCHERS (6)           |
| <input type="checkbox"/> FAMILY CIRCLE (12)                 | <input type="checkbox"/> OLD HOUSE JOURNAL (6)             | <input type="checkbox"/> WHITETAIL JOURNAL (6)         |
| <input type="checkbox"/> FAMILY FUN (10)                    | <input type="checkbox"/> OUTDOOR LIFE (12)                 | <input type="checkbox"/> WIRED (12)                    |
| <input type="checkbox"/> FAST COMPANY (10)                  | <input type="checkbox"/> OUTDOOR PHOTOGRAPHER (11) NR*     | <input type="checkbox"/> WORKING MOTHER (6)            |
| <input type="checkbox"/> FIELD & STREAM (12)                | <input type="checkbox"/> OUTSIDE (12)                      | <input type="checkbox"/> YOGA JOURNAL (9)              |
| <input type="checkbox"/> FITNESS (10)                       | <input type="checkbox"/> PARENTS (12)                      |                                                        |

Send as many "5 for \$20" orders as you like!

*"Tell your Friends and Families!"*

Send a copy of this page to us. Please make your address as short as possible. **Current customers - Please update your address!**

Allow 6-8 weeks for delivery. Pay by check, money order or **order online** and use credit card or PayPal.

Name and Inmate # (please print, maximum 24 characters):													
Address:													
City:						State:				Zip:			

\* No Renewal



## Inmate Magazine Service

P.O. Box 2063, Fort Walton Beach, FL 32549 [www.InmateMagazineService.com](http://www.InmateMagazineService.com)

OK to Copy!

# Unwanted Reprieve from Execution Upheld by Oregon Supreme Court

by Christopher Zoukis

AS PREVIOUSLY REPORTED IN *PLN*, Oregon death row prisoner Gary Haugen filed a legal challenge to Governor John Kitzhaber's November 2011 decision to impose a moratorium on the state's death penalty, which had the effect of granting Haugen a temporary reprieve from execution. [See: *PLN*, June 2013, p.30; Dec. 2012, p.47].

The Oregon Supreme Court held on June 20, 2013 that the reprieve was "valid and effective" irrespective of whether Haugen wanted to accept it. In a 40-page opinion written by Chief Justice Thomas A. Balmer, the Court ruled that a circuit court had erred in finding in favor of Haugen's unprecedented challenge.

When Governor Kitzhaber halted all executions in the state, he said Oregon's capital punishment process had "devolved into an unworkable system that fails to meet the basic standards of justice." Haugen, on death row for the 2007 murder of a fellow prisoner – his second murder conviction – disputed the governor's authority to grant him a temporary reprieve because he did not want to accept it.

Haugen contended that he should be able to choose whether to pursue further appeals or allow his death sentence to be carried out; he further argued the reprieve was invalid because it lacked an expiration date, which left him in limbo, and thus violated the Eighth Amendment's prohibition against cruel and unusual punishment.

The Oregon Supreme Court rejected those arguments, concluding "that the Governor's reprieve of Haugen's death sentence is valid and effective, regardless of Haugen's acceptance of that reprieve." See: *Haugen v. Kitzhaber*, 353 Ore. 715, 306 P.3d 592 (Or. 2013), *reconsideration denied*.

As a result of the ruling, Governor Kitzhaber's reprieve will last until he leaves office. His term expires next year, and if elected again he would serve until 2019. Haugen's attorney, Harrison Latto, a former state assistant attorney general, said if Kitzhaber is not re-elected the next governor could allow the reprieve to lapse.

In a prior term as governor, Kitzhaber had allowed the execution of two prison-

ers in 1996 and 1997. When elected again in 2010, he said he was haunted by the executions and would not allow any more prisoners to be put to death while he remained in office. Kitzhaber stated he had no sympathy for Haugen, but cited Oregon's "compromised and inequitable" capital punishment system.

Commutation of a death sentence is permitted under Oregon law, and two previous governors issued blanket commutations to death row prisoners in 1959 and 1964.

For now, Haugen's execution will con-

tinue to be delayed. "It could be a day, could be seven years," Latto said. "During that indefinite period, they're saying, 'sit tight and we'll tell you at the end of that period whether you'll be executed or not.'"

Then again, although a delay of unknown duration may be disconcerting, it certainly sounds better than a lethal injection administered sooner rather than later. ■

Sources: <http://enews.earthlink.net>, [www.huffingtonpost.com](http://www.huffingtonpost.com), [www.oregonlive.com](http://www.oregonlive.com), [www.sentencing.typepad.com](http://www.sentencing.typepad.com)

## Shareholder Resolutions Seek to Lower Phone Rates at Private Prisons

ON NOVEMBER 26, 2013, SHAREHOLDER resolutions were filed with Corrections Corporation of America (CCA) and The GEO Group, Inc. – the nation's two largest for-profit prison companies; the resolutions seek to reduce the high cost of phone calls made by prisoners at CCA and GEO facilities nationwide.

Prison phone rates are typically much higher than non-prison rates, and a 15-minute call can cost up to \$17.30. Such exorbitant costs make it difficult for prisoners to maintain regular contact with their families and children; an estimated 2.7 million children in the United States have an incarcerated parent.

In September 2013, the Federal Communications Commission issued an order capping the cost of interstate (long distance) prison phone calls. FCC Commissioner Mignon Clyburn observed that "Studies have shown that having meaningful contact beyond prison walls can make a real difference in maintaining community ties, promoting rehabilitation, and reducing recidivism. Making these calls more affordable can facilitate all of these objectives and more." However, the FCC's order has not yet gone into effect and does not apply to in-state prison phone rates. [See: *PLN*, Dec. 2013, p.1].

Therefore, Alex Friedmann, associate director of the Human Rights Defense

Center (HRDC), *PLN*'s parent non-profit organization, filed shareholder resolutions with CCA and GEO that would require both companies to reduce the cost of all phone calls made by prisoners housed at their for-profit facilities.

HRDC is a co-founder and coordinator of the Campaign for Prison Phone Justice, in conjunction with the Center for Media Justice/Media Action Grassroots Network (MAG-Net) and Working Narratives. The Campaign was instrumental in the FCC's decision to take action against interstate prison phone rates.

The shareholder resolutions request that CCA and GEO not accept "commissions" – kickbacks paid by prison phone companies, usually based on a percentage of revenue generated by prisoners' phone calls. Commission kickbacks correlate with higher prison phone rates, and eight states have banned commissions.

Further, the resolutions ask that the companies "give the greatest consideration to the overall lowest" costs when evaluating or entering into prison phone contracts. The resolution filed with CCA notes that one of the company's facilities, the Silverdale Detention Facility in Chattanooga, Tennessee, receives a 48% kickback and a 15-minute call "can cost as much as \$9.75." CCA received \$205,136.78 in prison phone commissions at Silverdale in fiscal year 2012 alone. Further, a GEO-operated facility in

Florida, the South Bay Correctional Facility, receives a 35% kickback that generated \$125,600 in commissions in fiscal year 2012.

"As the largest private prison and detention corporation in the country, CCA has a responsibility to ensure that the families of incarcerated individuals are able to maintain the vital relationships needed in the rehabilitation process," stated Steven Renderos, national organizer for the Center for Media Justice. "For immigrants in detention, a phone call can be the difference between securing adequate legal representation or not being able to see their families again."

If the resolutions receive a majority vote among CCA and GEO shareholders, they will require the companies to ensure their prison phone contracts comply with the terms of the resolutions within 180 days.

In October 2013, CCA vice president Kim White wrote that rehabilitation and reentry programs are a "top priority" for the company. "It is important to us to see inmates grow during their incarceration, offering them the chance at a better life for themselves and their families after their release," she said. "This is part of our responsibility to society as a corrections company, and it's also essential to serving our government partners and taxpayers well."

"This resolution gives CCA an opportunity to prove they are truly interested in rehabilitating prisoners and reducing recidivism," Friedmann stated. "By decreasing the high costs of prison phone calls, the company can promote greater communication between prisoners and their families and children, which research has shown results in improved post-release outcomes and lower rates of recidivism. Or, if CCA is primarily concerned about its profit margin, it will object to the resolution and try to prevent it from going to a shareholder vote."

Should the resolutions survive a challenge filed by CCA or GEO with the Securities and Exchange Commission (SEC), they will be presented to the companies' stockholders for a vote sometime in May 2014. Friedmann is represented pro bono by the New York-based law firm of Stroock, Stroock & Lavan. ■

Sources: *HRDC press releases (Dec. 2, 2013); CCA and GEO shareholder resolutions*

## Massachusetts Supreme Court: Failure to Register Guilty Plea Vacated

THE SUPREME JUDICIAL COURT OF Massachusetts held on November 19, 2012 that a sex offender did not violate the state's registration statute and should have been permitted to withdraw his guilty plea after being charged with failure to register.

Massachusetts' sex offender registry law requires level 2 and level 3 sex offenders to initially register in person at their local police department. "In each subsequent year," the offender is required to again register "during the month of birth."

Nicholas B. Loring was classified as a level 2 sex offender. He registered as required on June 20, 2008. When he did not register again during his birth month of September 2008, however, he was charged with failure to register.

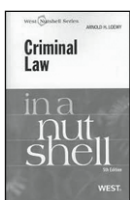
Loring pleaded guilty and was sentenced to one year imprisonment and lifetime community parole supervision. He subsequently moved to withdraw his guilty plea but the trial court denied his motion.

The Massachusetts Supreme Court reversed, concluding that "in its ordinary usage, an obligation occurring in a 'subsequent year' means the year following the reference year." Since Loring had initially registered in 2008, he was not required to register again until September 2009 – the subsequent year after he first registered.

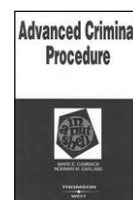
"Although the defendant admitted during the plea hearing that he did not register in his birth month (September) in 2008," the Court found that "the statute did not require him to do so. Being under no obligation to register ... in September, 2008, he could not be convicted of the offense of failure to register."

Consequently, because "a court may not convict unless there are sufficient facts on the record to establish each element of the offense," ... the defendant's plea was invalid" and Loring's motion to withdraw his guilty plea should have been granted. See: *Commonwealth v. Loring*, 463 Mass. 1012, 978 N.E.2d 763 (Mass. 2012). ■

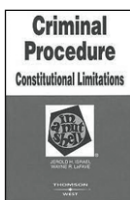
### New Titles Available in PLN's Bookstore



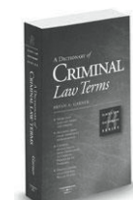
**Criminal Law in a Nutshell**, by Arnold H. Loewy, 5th edition, 387 pages. **\$43.95**



**Advanced Criminal Procedure in a Nutshell**, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **\$43.95**



**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFare, 7th edition, 603 pages. **\$43.95**



**A Dictionary of Criminal Law Terms (Black's Law Dictionary® Series)**, by Bryan A. Garner, 768 pages. **\$33.95**

☐ Criminal Law in a Nutshell ☐ Advanced Criminal Procedures in a Nutshell ☐ Criminal Procedure  
☐ Dictionary of Criminal Law Terms

Amount enclosed (add \$6 S&H for orders under \$50; free shipping over \$50) \_\_\_\_\_

By ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**PRISON LEGAL NEWS**

PO Box 1151 • Lake Worth, FL 33460  
Tel [561] 360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

## Tenth Circuit: FRAP 4(b) Clock Commences Upon Entry in Public Docket

**T**HE TENTH CIRCUIT COURT OF APPEALS held that a judgment must be entered on a district court's publicly accessible criminal docket to commence the 14-day time limit in which a defendant may file a notice of appeal.

Francisco Mendoza pleaded guilty to federal charges of conspiring to distribute methamphetamine in exchange for the government's agreement to recommend a sentence at the low end of the sentencing guidelines range.

At sentencing, the district court calculated Mendoza's guidelines range as 135 to 168 months. His defense counsel then reminded the court of the government's promise to recommend a sentence at the low end of that range. However, the prosecutor did not honor his promise. Rather, he "emphasized that Mendoza was a 'highest level' drug dealer, possessed firearms, and had been distributing drugs for twenty years."

Regardless, the district court sentenced Mendoza to 135 months in prison at the lowest end of the range. The court then filed a sealed judgment on September 3, 2009. "This filing was not noted or reflected in any way on the docket sheet available to the public. The only evidence in the record that judgment was entered is a supplemental appendix filed by the government which contains a 'Criminal Docket' titled 'Internal Use Only.'"

In June 2010, the district court responded to Mendoza's request for a copy of the docket sheet in his case. Then, on September 13, 2010, he filed a pro se notice of appeal. The government moved to dismiss, arguing that the appeal was untimely under Federal Rule of Appellate Procedure (FRAP) 4(b).

Although Mendoza filed his appeal more than a year after he was sentenced, the Tenth Circuit recognized that under Rule 4(b)(1)(A)(i), "the deadline to appeal begins to run not at sentencing but upon entry of judgment."

The appellate court rejected the government's argument that the "judgment was 'entered on the criminal docket' on September 3, 2009, when the court filed a sealed judgment and noted this filing on a document titled 'Criminal Docket ... Internal Use Only.'"

Interpreting FRAP 4(b), the Court of Appeals concluded "that a judgment is not 'entered on the criminal docket' for purposes of Fed.R.App.P. 4(b)(6) unless judgment is noted on the docket in a publicly accessible manner. This does not mean that a court must provide access to the judgment itself, but the public docket must reflect the date judgment was entered."

Since Mendoza's criminal docket did not reflect the date his judgment had been entered, the appellate court denied the government's motion to dismiss, finding that the "notice of appeal was filed after

the court announced its sentence but before the entry of judgment, and thus his appeal is timely."

Turning to the merits of the appeal, the Tenth Circuit agreed that the government had breached its agreement with Mendoza, despite the fact that his defense counsel "did not object to the prosecution's breach of the plea agreement." However, his sentence was affirmed because he was not prejudiced, as the trial court had in fact sentenced him at the low end of the guidelines range. See: *United States v. Mendoza*, 698 F.3d 1303 (10th Cir. 2012). ■

## No Immunity for Detainee's Death Due to Alcohol Withdrawal; \$1.23 Million Settlement on Remand

**T**HE SIXTH CIRCUIT COURT OF APPEALS held on November 20, 2012 that a Michigan county and two jail guards were not entitled to qualified immunity for a female detainee's death due to severe alcohol withdrawal.

Brenda Sue Smith, 37, was booked into the Lenawee County jail on a parole violation at about 5 p.m. on April 27, 2007. Sergeant Mary Neill, who searched Smith, later telephoned jail medical director Dr. Jeffrey Stickney. "She says she drinks every day, she's an alcoholic," Neill reported. "She's shaking really bad."

Stickney prescribed Librium for alcohol withdrawal, and Smith took the first dose at 9:35 p.m. Later that evening, Sergeant Paul Dye reported that Smith was suffering from "DTs" (delirium tremens).

"I better get some medical attention here because I'm going through withdrawals," Smith told her mother. "I'm already shaking like a leaf."

Two days after being booked into the jail, at 3:30 a.m., Sgt. Dye reported that Smith was exhibiting "paranoid behavior and irrational actions," including singing, pounding on the walls and speaking to relatives who were not present. Other staff witnessed similar behavior.

Jail guard Wendy Vanderpool later testified that Smith was "agitated, talking about things in her life as if she was there

and then she was back, you know, in the jail."

Dye moved Smith to a padded observation cell on April 29. He then called Dr. Stickney at 9:26 p.m. to report that she was "to the point of really bad hallucinations right now." He stated that Smith had not eaten lunch, was generally agitated and "getting kind of violent about wanting to get out of her cell."

Stickney assured Dye that "she's on good medicine," and said "sitting in the jail will do her some good." He mentioned he would have the part-time jail nurse examine her the next day.

Smith was so delusional that night that she thought the wall would fall down if she didn't support it, according to Vanderpool's testimony. She was "sweaty from holding the wall up."

By 5 a.m. on April 30, 2007, she was "getting more settled," and was "on the floor playing with puppy dogs and playing with bugs," Vanderpool testified.

Almost four hours later, Smith was on her buttocks and knees with her upper torso resting on the cell's bench. Sergeant James Craig entered the cell, set a cup of water down and left without touching or communicating with her.

Smith's condition was so bad by 9 a.m. that she could not be served with her parole violation notice. She last moved at 9:19



a.m., and was not breathing when guards entered the cell at 9:50 a.m. Paramedics arrived five minutes later and Smith was pronounced dead at a local hospital.

Smith's mother filed suit in federal court against the county and eight jail employees, including Dr. Stickney, alleging deliberate indifference to Brenda's serious medical needs and gross negligence under Michigan law. The district court denied qualified immunity to the defendants, who filed an interlocutory appeal.

The Sixth Circuit reversed the denial of qualified immunity as to Sgt. Dye and three other jail guards. Although it presented "a close question," the Court of Appeals upheld the denial of qualified immunity to Sgt. Craig. Likewise, it was "an extremely close call" for Vanderpool, but because she had worked as a paramedic for 14 years, the Court found that "her exposure to Smith's condition, her experience, and her inadequate monitoring of a detainee whom she knew to be in dire condition are enough to allow the claim of deliberate indifference to go to a jury."

Finally, noting the guards' "admissions that they did not fully grasp the difference between alcohol withdrawal and its more serious analogue, delirium tremens," the appellate court upheld the denial of qualified immunity to Lenawee County. "The record is replete with facts that raise a genuine issue of material fact with respect to the County's policies and practices in providing medical care in its jail," the Sixth Circuit noted. See: *Smith v. County of Lenawee*, 505 Fed. Appx. 526 (6th Cir. 2012).

Following remand, a \$1.23 million settlement was reached with Lenawee County, Sgt. Craig, Vanderpool and Dr. Stickney, which was approved by the district court on September 13, 2013. About \$439,010 of the settlement went to pay at-

torneys' fees and various expenses, with the remainder being placed under the control of a conservator appointed to represent Smith's minor child. See: *Smith v. Lenawee*

County, U.S.D.C. (E.D. Mich.), Case No. 2:09-cv-10648-DML-MJH. ■

Additional source: [www.toledoblade.com](http://www.toledoblade.com)

## FCC Rate Caps on Prison Phone Calls to Impact Nevada DOC's Budget

by David Ganim

THE RATE CAPS RECENTLY IMPOSED ON interstate (long distance) prison phone calls by the Federal Communications Commission (FCC) signal much-needed financial relief for prisoners and their families; however, they will also leave an estimated \$650,000 gap in the 2014 budget for the Nevada Department of Corrections.

Due to the FCC's rate caps, which have not yet gone into effect, the Nevada Board of Prison Commissioners was informed on December 17, 2013 that the state's prison system will no longer be able to charge per-call connection fees for interstate phone calls.

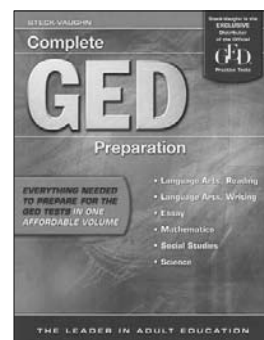
The Associated Press incorrectly reported that the Nevada DOC's interstate phone rates include a \$1.00 connection fee; actually, the connection fee for long distance calls from Nevada prisons is \$2.50, plus \$.49 per minute. The Nevada DOC's intrastate (in-state) phone rates include a \$1.00 connection fee plus \$.13 per minute – but intrastate calls are not covered by the FCC's order. [See: *PLN*, Dec. 2013, p.1].

When the rate caps go into effect – which is scheduled for February 13, 2014, although pending litigation may extend that date – prison systems will be allowed to charge a maximum of \$.21 per minute for interstate debit and prepaid calls, and \$.25 per minute for interstate collect calls.

Nevada prison officials said revenue generated from prisoners' phone calls helps to fund prison programs and services, and that the rate caps would result in a budget shortfall of \$650,000. The revenue is generated from a 54.2% commission kickback that the Nevada DOC receives pursuant to its contract with phone service provider CenturyLink.

Prison officials did not explain why revenue from such kickbacks – which mostly comes from price-gouging prisoners' family members through excessively high phone rates – is used to fund prison programs and services in the first place. ■

Source: *Associated Press*



### Complete GED Preparation [Paperback]

Publisher: Steck-Vaughn; 2nd edition  
928 pages; \$24.99; Item #: 1099

Over 2,000 GED-style questions thoroughly prepare learners for test day. This single book offers thorough coverage of the revised GED Test with new test information, instruction, practice, and practice tests. Answer key included.

Order from: **Prison Legal News**  
(Add \$6 shipping for orders under \$50)

**PO Box 1151**  
**Lake Worth, FL 33460**  
**Phone: (561) 360-2523**  
**[www.prisonlegalnews.org](http://www.prisonlegalnews.org)**

**inmateMAGS**.com  
formerly MyMagstore.com

Buy 1200 **SINGLE** Copies of Magazines • 1200 **Subscriptions** • **VIP Service**  
1800 **Newspapers** • Payment with **Stamps** • **Prepaid Accounts**  
Send \$3 or 10 Stamps for **50+ Page Full Catalog** (\$3 Discount Coupon Included)

InmateMAGS.com  
4208 University Way NE  
Seattle, WA 98105

www.inmateMAGS.com  
Info@inmateMAGS.com  
206-322-6397

## Religious Diet Qualified Immunity Test Outlined by Seventh Circuit

THE SEVENTH CIRCUIT COURT OF APPEALS has held that when determining whether a prison official is entitled to qualified immunity for refusing a prisoner's request for a religious diet, the district court must determine whether the official used the tenets of the religion to deny the request or used those tenets to evaluate whether the prisoner was seeking the diet for personal rather than religious reasons. The case settled following remand in May 2013.

Mondrea Vinning-El, a prisoner at Illinois' Pinckneyville Correctional Center, asked the prison's chaplain, Rick Sutton, for a vegan diet to conform to the tenets of his religion – the Moorish Science Temple of America. Sutton denied the request, observing that the tenets of that religion require a non-pork diet which can include dairy products and many kinds of meat and fish. Contending that his religious beliefs required a vegan diet no matter what other practitioners of the religion believe, Vinning-El filed suit in federal court against Sutton and the prison's warden, John D. Evans, in 2005.

The defendants moved for summary judgment. The district court granted summary judgment on Vinning-El's Religious Land Use and Institutionalized Persons Act (RLUIPA) claim and denied it as to his 42 U.S.C. § 1983 claim. The defendants filed an interlocutory appeal, contending they were entitled to qualified immunity.

After filing suit, Vinning-El was transferred to another prison that provided him with a vegan diet; this mooted his claim for injunctive relief, and his claim for monetary damages was the only relief remaining. Consistent with the Supreme Court's ruling in *Sossamon v. Texas*, 131 S.Ct. 1651 (2011) [PLN, Aug. 2011, p.22], the Seventh Circuit found RLUIPA does not provide for monetary damages; thus, the defendants prevailed on that claim. Also, Evans was entitled to summary judgment because he could not be held liable under a theory of supervisory liability.

As to Vinning-El's First Amendment claim against Sutton, the appellate court wrote that if Sutton "refused to approve religious diets for inmates who differ on dietary questions from their churches' leaders, he violated clearly established

rules of constitutional law."

However, "[a]lthough sincerity rather than orthodoxy is the touchstone, a prison is still entitled to give some considerations to an organization's tenets," the Seventh Circuit held. "For the more a given person's professed beliefs differ from the orthodox beliefs of his faith, the less likely they are to be sincerely held."

The district court had never made a determination on this question, and the

case was therefore remanded for a hearing to resolve the issue of qualified immunity relative to Vinning-El's sincerity of religious belief. See: *Vinning-El v. Evans*, 657 F.3d 591 (7<sup>th</sup> Cir. 2011).

Following remand the case settled on May 28, 2013 – after eight years of litigation – for a total of \$150, with each party to bear their own costs and attorneys' fees. Vinning-El was represented by the Chicago law firm of Kirkland & Ellis, LLP. ■

## SC Supreme Court Reverses *Furtick*; No Liberty Interest in Opportunity to Earn Sentence-Reduction Credits

THE SOUTH CAROLINA SUPREME COURT held in late 2012 that the Administrative Law Court (ALC) may not summarily dismiss a prisoner's appeal of a disciplinary conviction "solely on the basis that it involves the loss of the opportunity to earn sentence-related credits. Instead, the ALC must also consider whether the appeal implicates a state-created liberty or property interest."

In June 2008, South Carolina state prisoner Stacy W. Howard was disciplined for providing legal assistance to another prisoner – a violation of "Unauthorized Services/Piddling (845) of SCDC Policy OP-22.14." The violation precluded Howard from earning good-time credits for the month of the infraction and a reduction in earned-work credit for that month and subsequent months. He did not suffer a loss of previously-earned good-time credits.

Howard appealed his disciplinary conviction to the ALC pursuant to *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (S.C. 2000). However, eight days prior to Howard's disciplinary violation, the South Carolina Code had been amended to preclude an administrative law judge from hearing prisoner appeals "involving the loss of the opportunity to earn sentence-related credits."

The ALC summarily dismissed Howard's appeal, finding that the amendment had deprived it of jurisdiction and that "the statute applies not only to the loss of the right to earn good time for the month (of the infraction) but to the loss of the right to earn other credits

such as earned work credits."

On appeal, the South Carolina Supreme Court reconsidered its decision in *Furtick v. South Carolina Department of Corrections*, 374 S.C. 334, 649 S.E.2d 35 (S.C. 2007), in which the Court had held that "where a matter clearly implicates a loss of statutory sentence-related credits, the ALC may not summarily dismiss the action." The Court overruled *Furtick* and adopted the reasoning of the dissent in that case, finding that "the loss of the opportunity to earn sentence-related credits does not implicate a state created liberty interest." However, the Court found that completely eviscerating all judicial review of the loss of earned sentence-related credits due to a disciplinary violation may violate a prisoner's due process rights.

"The ALC may summarily dismiss an inmate appeal that involves only the loss of the opportunity to earn sentence-related credit," the Supreme Court wrote. "However, a matter is reviewable by the ALC where an inmate's appeal also implicates a state-created liberty or property interest, such as the loss of accrued sentence-related credits."

The Court held that the ALC had erred in summarily dismissing Howard's appeal because "it involved more than a review of the loss of the opportunity to earn good-time credits and a reduction in earned-work credits." The ALC could have ruled on Howard's as-applied challenge to the policy, which prohibited him from providing legal assistance to another prisoner.

Nevertheless, the Court found that remand was unnecessary because Howard did not demonstrate any grounds upon which relief could be granted. His challenge to the policy under *Johnson v. Avery*, 393 U.S. 483 (1969) was misplaced because reasonable alternatives existed to his provision of legal assistance to the other prisoner. He also could not prevail on his court access claim under *Bounds v. Smith*, 430 U.S. 817 (1977) and *Lewis v. Casey*, 518 U.S. 343 (1996) [PLN, Aug. 1996, p.1], as he had not suffered actual injury.

"Because there is no particularized right to provide legal assistance to another prisoner under *Johnson* and there is no derivative right to affirmatively assert a *Bounds* violation," the Court wrote it could not "discern a legal basis on which [Howard] could be granted relief." Even if he had "a viable *Johnson* defense to the enforcement of the prison disciplinary policy," he had shown "no cognizable injury as a result of the enforcement." Howard's due process claims also lacked merit, in part because he had admitted to the policy violation.

Accordingly, the ALC's dismissal of his appeal was affirmed. See: *Howard v. South Carolina Department of Corrections*, 399 S.C. 618, 733 S.E.2d 211 (S.C. 2012).

Federal courts in South Carolina have since used the decision in *Howard* to dismiss due process claims raised by state prisoners related to the opportunity to earn sentence-reduction credits. For example, on November 5, 2013, the U.S. District Court adopted a magistrate's report and recommendation that certain defendants be dismissed without service of process in a § 1983 suit raising claims concerning a prisoner's placement in a Special Management Unit.

The district court held that "the Mag-

istrate Judge correctly found that under South Carolina law, 'an inmate's loss of the opportunity to earn sentence-related credits does not implicate a state-created liberty

interest,'" citing the state Supreme Court's ruling in *Howard*. See: *Abdullah v. Thomas*, U.S.D.C. (D. SC), Case No. 2:12-cv-03499 -RMG; 2013 U.S. Dist. LEXIS 159049. █

## Multiple Convictions, Single Proceeding Triggers Alaska Lifetime Sex Offender Registration

**T**HE ALASKA SUPREME COURT HAS HELD that the state's lifetime sex offender registration requirement for multiple sex offenses applies to multiple convictions arising from a single criminal proceeding.

The Alaska Sex Offender Registration Act (ASORA), Alaska Stat. § 12.63.020(a)(1)(B), requires a person "convicted of ... two or more sex offenses" to register for life.

In 1995, James D. Ward was convicted, in a single criminal proceeding, of sex offenses involving two children. Following his release from prison he was informed that he was subject to lifetime sex offender registration.

Likewise, in a single 2007 criminal proceeding, defendant Michael E. Boles was convicted of sexual offenses against two children. He also was required to register for life pursuant to ASORA.

Ward and Boles appealed their lifetime registration, arguing "that the pertinent statute, AS 12.63.020(a)(1)(B), is ambiguous, because it can be read to require convictions in more than one proceeding. They therefore reason that the rule of lenity requires that the ambiguity be resolved in their favor and thus that the statute be read to require them to register for 15 years, not life."

Ward's lifetime registration was affirmed by a superior court while Boles' was

reversed by a different court. Appeals were taken in both cases.

The Alaska Supreme Court consolidated the appeals and concluded that the rule of lenity did not apply because "The statute, in requiring persons 'convicted of ... two or more sex offenses' to register for life, is unambiguous and cannot reasonably be read to condition lifetime registration on two or more separate convictions for sex offenses, or on any sequential or chronological separation between convictions."

Thus, both Ward and Boles were required to register for life under ASORA. See: *Ward v. State*, 288 P.3d 94 (Alaska 2012). █

**SMITH'S GUIDE to HABEAS CORPUS RELIEF**  
for State Prisoners under 28 U.S.C. §2254

Example pleadings from the initial habeas corpus petition to the final petition for a writ of certiorari. Let Smith guide you step-by-step through the federal courts with confidence. 380 pages.

\$24.95 + \$6.95 shipping & handling. In CA add \$2.18 sales tax. Sent via USPS media mail Money orders, personal or institutional checks ONLY. Send \$31.90 (In CA, \$34.08) payable to Roberts Company

Send name, address, prisoner #, and payment to:  
**Roberts Company, 15412 Electronic Lane #101**  
Huntington Beach, CA 92649  
Also available on Amazon.com

Introducing **THE BUZZ REPORT!** Subscribe today, and get all of your sports scores and lines delivered conveniently to your email inbox, every day! Add **info@sportzzbuzz.com** to your Corrlinks email subscription list for info. on how to get The Buzz!

# Seventh Circuit Affirms Dismissal of Prisoner's Law Library Access Claim

by Derek Gilna

ILLINOIS STATE PRISONER BRIAN BURD filed a 42 U.S.C. § 1983 complaint for damages in 2010, alleging that officials at the Sheridan Correctional Center had denied him reasonable access to the facility's law library; consequently, he was unable to research and timely file a motion to withdraw his guilty plea or appeal his sentence.

Burd "missed the [30-day] deadline to file his motion, but he continued to seek access to Sheridan's law library. He filled out request slips, but each time he was denied access because the library was closed. When he explained to defendant Gail Sessler, the educational administrator at Sheridan, that he wanted to research a motion to withdraw his guilty plea or an appeal of his sentence, she told him that any such action would be untimely and denied him access to the library."

In affirming the district court's dismissal of Burd's claims, the Seventh Circuit relied upon *Heck v. Humphrey*, 512 U.S. 477 (1994) [*PLN*, Sept. 1994, p.12].

According to the appellate court, *Heck* mandates a "favorable termination requirement," whereby "a favorable determination on the damages claim [under § 1983] necessarily would imply the invalidity of Mr. Burd's conviction and therefore warrant the dismissal of the damages claim as well."

In other words, the Court of Appeals found that "a § 1983 suit for damages that would necessarily imply the invalidity of the fact of an inmate's conviction, or necessarily imply the invalidity of the length of an inmate's sentence, is not cognizable under § 1983 unless and until the inmate obtains favorable termination of a state, or federal habeas, challenge to his conviction or sentence," quoting *Heck*, 512 U.S. at 487.

Without considering Burd's argument that he had been damaged by deprivation of access to the courts, the Seventh Circuit wrote he "could have sought collateral relief" under federal habeas corpus but "declined the opportunity" to do so, and may not now file a § 1983 action for damages as a means of skirting *Heck*'s favorable termination requirement.

In conclusion, the appellate court

joined the Sixth and Ninth Circuits "in holding that *Heck* bars a § 1983 action where: (1) favorable judgment would necessarily call into question the validity of the underlying conviction or sentence and (2) the plaintiff could have pursued collateral relief but failed to do so in a timely manner."

Accordingly, the district court's judgment of dismissal was affirmed.

Burd petitioned the U.S. Supreme Court for a writ of certiorari, which was denied on June 10, 2013. See: *Burd v. Sessler*, 702 F.3d 429 (7th Cir. 2012), *cert. denied*. ■

## Oregon: Life Sentence for Murder Unconstitutional During Eight-Month Period in 1999

THE OREGON COURT OF APPEALS HAS held that for crimes committed between February 17, 1999 and October 23, 1999 (aka "the *McLain* window"), the only permissible sentence for a murder conviction was 300 months in prison followed by lifetime post-release supervision.

From 1995 until February 17, 1999, the statutory punishment for murder in Oregon was life imprisonment with a 300-month minimum under ORS 163.115(5). However, the Oregon Board of Parole and Post-Prison Supervision (Board) had no authority to release an offender who had served the minimum sentence, resulting in a "true life" sentence because there was no possibility of parole.

On February 17, 1999, the Oregon Court of Appeals issued an en banc decision in *State v. McLain*, 158 Or.App 419, 974 P.2d 727 (Or. Ct. App. 1999), finding that the life imprisonment portion of the sentence for murder was unconstitutionally disproportionate because it resulted in greater punishment than the more serious offense of aggravated murder, which allowed for parole eligibility. As a result, *McLain* held that "the proper sentence for the defendant's crime of murder was a mandatory determinate sentence of 300 months' imprisonment (25 years) followed by a lifetime of post-prison supervision."

On October 23, 1999, the Oregon legislature corrected the proportionality problem by amending the murder sentencing statute to provide for a 300-month minimum followed by parole eligibility.

The legislature intended that the amendment would apply to any person convicted of murder regardless of when the crime occurred.

Thearone Giles committed a murder on August 26, 1999, during the *McLain* window, but was convicted on September 20, 2001 – after the 1999 amendment was enacted to resolve the proportionality issue addressed in *McLain*.

At Giles' April 2010 resentencing hearing, the trial court imposed a sentence of life imprisonment with the possibility of parole following a 300-month minimum, based on the 1999 amendment. Giles appealed, asserting that the "life imprisonment" portion of his sentence violated state and federal ex post facto prohibitions.

The Oregon Court of Appeals agreed, holding that "when defendant committed his offense, ORS 163.115(5) had not yet been amended to correct its disproportionality; thus, ORS 163.115(5) was inapplicable." As such, a 300-month sentence followed by a term of lifetime post-release supervision was the only applicable sentence that Giles could receive.

"Under the amended version of ORS 163.115(5)(a), defendant would be entitled to only the possibility of parole after serving a 300-month minimum. Accordingly, as applied to defendant, the amended version of ORS 163.115(5) would be an ex post facto violation," the appellate court wrote. See: *State v. Giles*, 254 Ore.App. 345, 293 P.3d 1086 (Or. Ct. App. 2012). ■



# CHEAP FEDERAL INMATE CALLS WITH SENTEL

Connect & Save up to 85% on Federal Prison Calls with Sentel.

Below is a summary of the Great plans we offer:

## MONTHLY PACKAGES: (USA ONLY)

1Month 300mns USA for \$14.99  
3Months 300mns USA per Month for \$41.99  
6Months 300mns USA per Month for \$71.99  
12Months 300mns USA per Month for \$119.99  
1Month 300mns Mexico for \$39.99  
1Month 300mns Dominican Republic \$39.99  
1Month 300mns Colombia for \$44.99  
Additional lines are priced @ \$1.99 per Month

## PER MINUTE PLAN:

All Calls inside the United States are 0.06 cents per minute

**Mexico landline: 0.10 cents per minute and Cell phone 0.15 cents**

**Dominican Republic landline: 0.12 cents per minute and Cell phone 0.15 cents**

**All Colombia Calls: 0.15 cents per minute**

**All Canada Calls: 0.08 cents per minute**

**All Honduras and El Salvador Calls: 0.29 cents per minute**

**Nicaragua , Haiti, calls: 0.35 cents per minute**

**Most other countries, calls range from 0.22 cents to 0.29 cents**

*Activation fee for each line is \$1 for the first time*

*Monthly fee for each line is 50 cents*

## Sentel, Sentel

9550 S. Eastern Ave Ste 253

Las Vegas, NV 89123

Ph: 702-430-9445

Email: [sentel.nv@gmail.com](mailto:sentel.nv@gmail.com)

Website: [www.sentelinmatecall.com](http://www.sentelinmatecall.com)

## Tenth Circuit Orders Foreseeability Jury Determination for Detention by New Mexico DOC Employees

THE TENTH CIRCUIT COURT OF APPEALS reversed a district court's ruling that state corrections employees could be held liable only for their own initial 2- to 3-minute detention of two suspects, and not for further detention that occurred after the suspects were transferred to police custody.

New Mexico Corrections Department employees Gary Carson and Don Mangin were patrolling a high-crime neighborhood with Rio Rancho police officers as part of a task force when they observed Phillip Martinez, Ricardo Sarmiento and a third man outside an apartment building.

When the officers turned on their emergency lights, the third man fled and one of the police officers chased after him. Carson and Mangin drew their weapons and forced Martinez and Sarmiento to the ground, then cuffed and searched them.

Still cuffed, Martinez and Sarmiento were transferred to the custody of other Rio Rancho police officers several minutes later. They were arrested, booked and detained; Sarmiento was held for five hours and Martinez for twelve hours.

Martinez and Sarmiento filed a 42 U.S.C. § 1983 suit in federal court against Carson, Mangin and several Rio Rancho defendants, alleging unlawful seizure in violation of the Fourth Amendment.

Denying the parties' cross-motions for summary judgment, the district court "held that the pertinent question for the jury to decide was whether Defendants had reasonable suspicion of criminal activity when they detained Plaintiffs – if so, the brief seizure was warranted as an investigative detention responsive to officer safety concerns; if not, it was an illegal seizure." The court also held that Carson and Mangin "could only be held liable for their own alleged unlawful conduct, not for the actions of the Rio Rancho officers." The Rio Rancho defendants settled before trial for \$85,000.

At trial, a federal jury found that Mangin and Carson lacked reasonable suspicion to justify the initial seizure; Martinez and Sarmiento were each awarded \$2,500 in compensatory damages and \$2,500 in punitive damages. The district court subse-

quently awarded attorney fees and costs in the total amount of \$116,104.54.

On cross-appeals, the Tenth Circuit reversed the district court's order limiting the defendants' liability to only the first few minutes of detention. The appellate court held that a reasonable jury could find the initial illegal detention was a proximate cause of Martinez and Sarmiento's longer detention by Rio Rancho police officers.

"The extent to which Defendants can be held liable for the further detention depends upon what they reasonably foresaw when they transferred Plaintiffs to police custody," the Court of Appeals wrote. "On remand, the district court should conduct a

second trial on the limited issue of whether (and to what extent) Defendants should have known their unlawful seizure of Plaintiffs would result in their prolonged detention in Rio Rancho custody and, if so, whether any additional damages are appropriate." The defendants' cross-appeal was dismissed as being untimely filed. See: *Martinez v. Carson*, 697 F.3d 1252 (10th Cir. 2012).

Following remand, the case settled on January 28, 2013, before the second trial was held. According to Paul Kennedy, one of the attorneys representing Martinez and Sarmiento, the defendants agreed to pay \$60,000 in damages and approximately \$180,000 in attorney fees and costs. ■

## Ninth Circuit: Budgetary Constraints May Excuse Deliberate Indifference to Prisoner's Serious Medical Needs; En Banc Review Granted

ON JANUARY 7, 2013, A DIVIDED Ninth Circuit panel held that a prison employee, alleged to be deliberately indifferent to a prisoner's serious medical needs, can avoid liability for damages by establishing that his inability to provide necessary medical care resulted from a lack of resources over which he had no control.

In a well-reasoned dissent, Circuit Judge Marsha S. Berzon criticized the majority decision on the ground that it could not be reconciled with settled precedent holding that budgetary constraints do not justify constitutionally deficient care or conduct.

While incarcerated at the California State Prison in Lancaster in 2004, Cion A. Peralta sought dental care for cavities, bleeding gums and pain throughout his mouth. Over the course of a year and a half he was seen by a prison dentist, Dr. Sheldon Brooks, three times. Dr. Brooks gave Peralta ibuprofen twice and antibiotics on one occasion; he asked Peralta to identify which tooth hurt the most, X-rayed that tooth and offered to extract it, but never checked for other cavities or infections.

Peralta filed suit pursuant to 42 U.S.C. § 1983, alleging that Dr. Brooks had been deliberately indifferent to his serious dental needs. Brooks presented evidence that the dentist-to-prisoner ratio was inadequate for him to provide proper care for all prisoners, and at trial the jury was instructed that he could not be held responsible for failing to provide services if he lacked the resources to do so.

The jury returned a verdict in favor of Dr. Brooks. Peralta appealed, arguing that regardless of budgetary constraints, Brooks could not be absolved of liability if, despite having actual knowledge of a serious medical need, he failed to provide care responsive to that need.

Ignoring circuit precedent squarely supporting Peralta's position, such as *Jones v. Johnson*, 781 F.2d 769 (9th Cir. 1986) and *Snow v. McDaniel*, 681 F.3d 978 (9th Cir. 2012) [*PLN*, Oct. 2013, p.52], the majority upheld the disputed jury instruction, in effect allowing prison officials to shield themselves from liability, regardless of their personal actions or inactions, by pointing to systemic funding deficiencies.

"We see no reason to impose an injus-

tice upon employees of prison systems in an attempt to avoid injustices to inmates,” the majority wrote. “Nor do we see any reason to drive prison employees out of positions where they can at least try to ameliorate afflictions, even though they have no apotropaion that will effect cures in the absence of sufficient resources.”

In a separate, unpublished ruling also entered on January 7, 2013, the appellate court addressed Peralta’s appeal of the district court’s Fed.R.Civ.P. Rule 50 judgment as a matter of law in favor of Dr. Thaddeus Dillard, the Chief Dental Officer at the California State Prison in Lancaster, and Dr. Junaid Fitter, the facility’s Chief Medical Officer.

The Court of Appeals upheld the district court’s judgment, finding that “a reasonable juror would not have a legally sufficient evidentiary basis to find for Peralta on his claims against Dr. Dillard and Dr. Fitter for deliberate indifference.” Both doctors, who were supervisors, were not directly deliberately indifferent to Peralta’s medical needs, the Court held.

Judge Berzon issued another dissenting opinion in that ruling, based both on the issues raised in the decision concerning Dr. Brooks and also because Dillard and Fitter could have been found liable “regardless of whether they knew of Peralta’s own serious medical needs. They need only be aware that ‘someone in [Peralta’s] situation’ – namely other Lancaster prisoners – had a ‘substantial risk of serious harm’ in the absence of timely care.”

She noted that “These defendants had the authority to make decisions regarding which prisoners were to receive medical treatment when – within the staffing and funding constraints of the prison – but nonetheless rubber stamped the decision to keep Peralta on the routine waiting list.” See: *Peralta v. Dillard*, 520 Fed.Appx. 494 (9th Cir. 2013).

On June 26, 2013, the Ninth Circuit Court of Appeals granted en banc review of the panel’s ruling as to Dr. Brooks; the en banc decision remains pending. See: *Peralta v. Dillard*, 704 F.3d 1124 (9th Cir. 2013), review en banc granted. ■

### Dictionary of the Law

Thousands of clear, concise definitions.  
See page 61 for ordering information.

## Washington Defendant Improperly Denied Transcript at State Expense

**T**HE WASHINGTON STATE SUPREME Court held in a November 8, 2012 en banc ruling that an indigent defendant was improperly denied a jury voir dire transcript.

When appealing his convictions for first-degree murder, second-degree murder and two counts of unlawful possession of a firearm, Merle William Harvey requested a jury voir dire transcript at public expense. He needed the transcript to prove his claim that the public was improperly excluded from the courtroom during jury selection. The trial court refused and the Court of Appeals affirmed.

Relying on a relative’s sworn declaration that she had been turned away from the courtroom during voir dire, Harvey briefed the issue in the absence of the transcript. The appellate court rejected his argument, however, finding that it “was not supported by the record provided.” Harvey sought discretionary review, which was granted.

The Washington Supreme Court reversed, stating, “Harvey contends that the

trial court erred by closing the courtroom during jury selection. Without a transcript of voir dire, the reviewing court cannot properly consider this claim.” As such, the trial court had “erroneously refused to order that portion of the record transcribed at public expense.”

The Court noted that “It is well established that [t]he State must provide indigent criminal defendants with means of presenting their contentions on appeal which are as good as those available to nonindigent defendants with similar contentions,” pursuant to *Draper v. Washington*, 372 U.S. 487, 496 (1963).

“Harvey need not make a particularized factual showing to be entitled to transcripts but need only demonstrate a colorable need,” the Supreme Court explained. “He has done so. He is therefore entitled to transcription of the jury voir dire at public expense.” Harvey represented himself pro se. See: *Washington v. Harvey*, 175 Wn.2d 919, 288 P.3d 1111 (Wash. 2012) (en banc). ■

## The American Prison Writing Archive

The American Prison Writing Archive (APWA) is an in-progress, Internet-based archive of non-fiction essays offering the public first-hand testimony as to the living and working conditions experienced by prisoners, prison employees and prison volunteers. Anyone who lives, works or volunteers inside American prisons can contribute non-fiction essays based on their first-hand experiences. There is a 5,000 word limit (15 double-spaced pages). All writing on the APWA’s website will be accessible to anyone in the world with Internet access.

All topics are of interest, including descriptions of sources of stress, ways of coping, health care, causes of violence and ways to reduce violence, material conditions, education, employment conditions and the challenges these conditions present, the environment for volunteers, the aging prison population, visions of a better way to operate (personally, politically, institutionally, etc.), reflections on the work of dealing with time inside (for workers as well as prisoners), the challenges of physical and psychological survival, public perception and popular depictions of prisoners and prison workers, the politics and economics of mass incarceration, what works and why it works, and what doesn’t work and why it doesn’t work (i.e., practical views on reform), etc. We are open to any writing or testimony about issues that matter to incarcerated people, prison staff, administrators, corrections officers, teachers and volunteers.

**A signed APWA permission-questionnaire sheet must accompany all submissions posted on the APWA’s website.** For more information and to download the permission-questionnaire, go to: [www.dhinitiative.org/projects/apwa](http://www.dhinitiative.org/projects/apwa). Requests for information and copies of the permission-questionnaires can be mailed to:

APWA, 198 College Hill Road, Clinton, NY 13323-1218.

# Oregon: Jury Trials Required When Prosecutors Treat Misdemeanors as Violations

**T**HE OREGON COURT OF APPEALS HELD on September 26, 2012 that criminal defendants are entitled to jury trials and reasonable doubt determinations when misdemeanors are reduced to violations – a ruling that was subsequently affirmed by the state Supreme Court.

Under ORS 161.566(1), Oregon prosecutors may treat most misdemeanors as Class A violations. If they choose to do so, the charge is tried in court without a jury and the prosecution has the burden of proving guilt by a preponderance of the evidence. ORS 151.076(1) and (2). If the defendant is convicted, the court may impose a fine of up to the maximum amount that could have been imposed for the class of misdemeanor that was reduced to a violation. ORS 161.566(2)(b).

Tawanna D. Fuller was charged with two misdemeanor theft offenses stemming from a July 2010 shoplifting incident. When the state elected to prosecute the charges as violations under ORS 161.566(1), Fuller moved for a jury trial and to have her guilt proven beyond a reasonable doubt. The trial court denied the motion and found her guilty of the charges using a preponderance of the evidence standard. Although the court could have imposed a fine of \$6,250 on one conviction and \$1,250 on the other, it imposed a \$600 fine – \$300 for each conviction.

The Oregon Court of Appeals reversed, concluding that the trial court had improperly denied Fuller's motion for a jury trial and reasonable doubt determination because treating her misdemeanor charges "as violations pursuant to ORS 161.566 retains too many characteristics of a criminal prosecution to deny defendant the protections of a jury trial and an evidentiary standard of proof of the offenses beyond a reasonable doubt." See: *State v. Fuller*, 252 Ore.App. 391, 287 P.3d 1263 (Or. Ct. App. 2012).

Prosecutors immediately bemoaned the decision, noting that in an effort to save money, several Oregon counties with strained budgets – including Multnomah, Marion and Lane counties – downgraded many misdemeanor charges to violations.

Clatsop County District Attorney Josh Marquis said the downgrading practice

saved staff time and benefited the defendant by eliminating the possibility of a criminal conviction. He suggested, however, that the ruling may negatively impact his county's use of the practice.

"There's no incentive for the district attorneys to reduce [misdemeanor charges] if you're going to have to go to trial with a defense attorney, if you have to use all the same resources," Marquis noted.

The Oregon Supreme Court granted the state's petition for writ of certiorari and affirmed the decision of the appellate court on October 3, 2013. The Supreme Court

found "that the legislature may decriminalize minor offenses by enacting a system to prosecute violations, but, in doing so, may not deny an accused the right to a jury trial ... if the proceeding retains attributes of a 'criminal prosecution.'" See: *State v. Fuller*, 354 Ore. 295, 311 P.3d 861 (Or. 2013). The Court reached the same conclusion in another case decided the same day as its ruling in *Fuller*, which involved similar issues. See: *State v. Benoit*, 354 Ore. 302, 311 P.3d 874 (Or. 2013). ■

Additional source: *The Oregonian*

## Ninth Circuit: No Summary Judgment on Claim of Excessive Use of Pepper Spray

**O**N JANUARY 17, 2013, THE NINTH Circuit Court of Appeals reversed a grant of summary judgment in favor of California prison officials, concluding that the district court had failed to consider the evidence in the light most favorable to the prisoner plaintiff. Given the facts alleged, the appellate court held a rational jury could find that the use of pepper spray to subdue a prisoner who was in a locked cell behind a metal door constituted excessive use of force in violation of the Eighth Amendment.

While confined to a cell at Salinas Valley State Prison where meals were delivered through a 12" x 6" food port, California state prisoner Edward T. Furnace, a practitioner of the Shetaut Neter religion, was authorized to receive vegetarian meals. One morning, when his request for a vegetarian breakfast was denied (and he was given the option of accepting a regular meal instead), Furnace tried to question the guards delivering the breakfast trays. According to his § 1983 complaint, he put his fingertips on the bottom part of the open food port for balance; without a verbal warning, two guards then pepper-sprayed him for "maybe a minute."

Furnace "was struck by pepper spray in the lower part of his face, on his chest, on his stomach, and on his groin area. The pepper spray caused his skin to blister and burn. He experienced a burning sensation for three or four days following the incident. After the incident, he also developed a rash

in his groin area that he believes may have been caused by the pepper spray."

The defendant guards moved for summary judgment on grounds of qualified immunity, presenting a different version of events. They claimed that Furnace was told he had ten seconds to remove his hands from the food port; that he was "aggressive" in his refusal to do so; and that he was given only two short blasts of pepper spray. The district court credited the guards' version over Furnace's and granted their motion for summary judgment.

On appeal, the Ninth Circuit concluded that the discrepancy between the two versions of events was too great to be capable of resolution on summary judgment, as there were genuine issues of material fact in dispute. Turning to the question of whether the force used by the guards was "wanton and unnecessary," the appellate court applied the five-factor analysis set forth in *Hudson v. McMillian*, 503 U.S. 1 (1992) [*PLN*, May 1992, p.3].

The Court of Appeals concluded that it was unclear, based on Furnace's version of events, that an application of force was even required; or, if it was, that the amount of pepper spray employed was not excessive. Thus, summary judgment was inappropriate.

The Ninth Circuit also noted that based on Hudson's version, the guards had failed to follow a prison policy (Operation Procedure 29) that requires a verbal warning



prior to the discharge of pepper spray. “OP 29 bears directly on the situation that the officers confronted, and is therefore relevant to determining whether the officers could have thought their conduct was reasonable and lawful.” However, the appellate court cautioned “that we do not mean to suggest

that any and every deviation from prison policy automatically jeopardizes a correctional officer’s entitlement to qualified immunity.”

The Court of Appeals upheld the district court’s grant of summary judgment on Furnace’s separate equal protection claim,

related to the guards’ failure to provide him with a vegetarian breakfast. Accordingly, the lower court’s judgment was reversed in part and affirmed in part. See: *Furnace v. Sullivan*, 705 F.3d 1021 (9th Cir. 2013).

Following remand, the case settled in June 2013 for \$8,000. ■

## Hawaii: Incarceration is Good Cause for Failure to Appear; Bail Forfeiture Set Aside

**T**HE HAWAII SUPREME COURT HAS HELD that incarceration constitutes good cause for failing to appear at an arraignment. As such, the trial court abused its discretion in refusing to set aside a bail forfeiture.

Atmarama D. Diaz faced criminal charges in Hawaii and California. He was arrested on a drug charge at Honolulu International Airport in July 2004, posted \$1,000 bail and was released. Later that day he traveled to California to face his charges in that jurisdiction.

Diaz was taken into custody in Cali-

fornia, where he remained at the time of his August 9, 2004 Hawaii arraignment. The trial court forfeited his bail when he did not appear.

Diaz’s attorney moved to set aside the bail forfeiture, arguing that Diaz’s incarceration in California made it impossible for him to appear for the arraignment in Hawaii. The court denied the motion, finding that Diaz’s incarceration was not “good cause” to set aside the forfeiture. The Intermediate Court of Appeals affirmed.

The Hawaii Supreme Court reversed, however, holding that the trial court had

abused its discretion in denying Diaz’s motion because, based on the record before the Court, he “did establish good cause for setting aside” the bail forfeiture under Haw. Rev. Stat. § 804-51 (Supp. 2009), due to his incarceration.

The Supreme Court wrote, “There is no indication in the record that Petitioner [broke] his ... recognizance intentionally, with the design of evading justice, or without a sufficient cause or reasonable excuse.” The case was remanded for further proceedings. See: *Hawaii v. Diaz*, 128 Haw. 215, 286 P.3d 824 (Haw. 2012). ■

## Res Judicata Doesn’t Bar Ohio Post-release Control Challenge

**T**HE OHIO SUPREME COURT HAS HELD that “when a criminal defendant is improperly sentenced to post-release control, res judicata does not bar the defendant from collaterally attacking his conviction for escape due to an earlier post-release-control sentencing error.”

In 1998, Donald Jack Billiter III was convicted of a first-degree felony and sentenced to three years in prison and post-release control of “up to a maximum of three (3) years.” Ohio law actually mandated a post-release control term of five years.

Billiter violated his post-release control and pleaded guilty to escape in 2004. He was initially sentenced to probation, which was later revoked and he was sentenced to six years in prison.

In 2009, the Ohio Supreme Court held in *State v. Bloomer*, 909 N.E.2d 1254 (Ohio 2009) that an improperly imposed post-release control term cannot be enforced.

In response, Billiter moved to withdraw his guilty plea on the escape charge, on the theory that he had never been legally placed on post-release control. He claimed he was “actually innocent” of escape and was serving a sentence that was a legal nullity.

The Ohio Supreme Court agreed, noting

that it had “consistently stated, if a trial court imposes a sentence that is unauthorized by law, the sentence is void.” The Court then rejected the state’s argument that Billiter’s challenge was barred by res judicata, observing that it had held in *State v. Fischer*, 942 N.E.2d 332 (Ohio 2010)

“that a void post-release-control sentence ‘is not precluded from appellate review by principles of res judicata, and may be reviewed at any time, on direct appeal or collateral attack.’” See: *Ohio v. Billiter*, 134 Ohio St.3d 103, 980 N.E.2d 960 (Ohio 2012). ■



**TIMEZONE GIFTS**

**America's  
#1  
Prisoner  
Gift Shop**

**Prisoner Gift Connection  
to Family and Friends**

For a free catalog  
with over 150 Gifts  
Ranging \$2.00-\$12.95  
(Greeting Cards, Toys,  
T-Shirts, Stuffed Animals,  
Jewelry, and more),  
Write to:  
**TimeZone Gifts, L.L.C.**  
**P.O. Box 41093**  
**Houston, TX 77241**

## News in Brief

**Alabama:** On July 29, 2013 there was a break-in at the Draper Correctional Facility. According to the Department of Corrections, three sections of the prison were burglarized in the early morning hours, and laptop computers and multiple weapons were discovered missing when employees started arriving around 5:00 a.m. The facility's farm office, radio shop and dog kennels, which are located apart from the prison population, were reportedly breached.

**Arizona:** Newly-hired Maricopa County jail guard Rachel Harris, 22, was attacked on June 24, 2013 by prisoner Bobby Ruiz as she entered his cell at the Lower Buckeye Jail, and during the assault Ruiz bit off part of one of her ears. Two other prisoners rushed to help Harris, pulling Ruiz off her and restraining him until other guards arrived. Sheriff Joe Arpaio told reporters that the missing piece of Harris' ear could not be found and that Ruiz had presumably swallowed it.

**Arkansas:** Steven Mitchell, 39, died in a crash on July 30, 2013 after leading police on a car chase through the state of

Missouri. He had escaped from the Jackson County Detention Center in Arkansas two days earlier with another prisoner. A Nissan Sentra driven by Mitchell's wife, Jessica, with Mitchell as a passenger, was pulled over. When the officer asked Jessica to step out of the car, Mitchell jumped into the driver's seat and sped away. Sheriff David Lucas told ABC News that "During the pursuit, Mitchell wrecked his vehicle and sustained fatal injuries."

**Bolivia:** According to government officials, about 1,500 young children and adolescents live in Bolivian prisons with incarcerated relatives. The practice, which has been criticized, led to the pregnancy of a 12-year-old girl who was raped by her father, uncle and godfather inside the San Pedro prison in La Paz. In June 2013, prisons director Ramiro Llanos, who had spent part of his childhood living in a jail with his father, called on police to "stop being so corrupt and stop allowing children in prisons."

**Florida:** On July 24, 2013, Lowell Correctional Institution prisoner Yvonne

Eugene McBride died from what family members were told was pneumonia. The day prior to McBride's death, a mysterious "flu-like" illness was reported among prisoners in R Dorm. The outbreak led officials to restrict the movement of more than 150 prisoners while the undiagnosed sickness was investigated. McBride's sister said she had tried to visit the prison the previous month, and Yvonne told her she was weak and had requested medical help, which was denied.

**Florida:** Pasco County deputy Norman Grant was

arrested on a charge of child abuse on July 5, 2013 after choking and threatening to break the neck of a 16-year-old prisoner. The teenager was strapped in a restraint chair when the incident occurred. Grant has been the subject of three previous internal investigations into excessive force, but was cleared in those incidents due to lack of evidence. This time the incident was caught on video. Grant was fired the same day he was arrested. "This deputy probably should've never worn a badge," said Pasco County Sheriff Chris Nocco.

**Florida:** Anthony Gentile, a convicted sex offender held at the Manatee County Jail, faces additional charges after he reportedly performed illicit and disgusting acts on food before it was served to a jail employee. Several witnesses described Gentile putting a salad spoon down his pants during the June 2, 2013 incident, then placing the spoon back in the salad, putting his genitals on the salad and spitting on the salad. The staff member reportedly tasted the salad without knowing what had been done to it.

**France:** Members of the UFAP-UNSa prison guard union gathered to protest in front of more than 100 jails on June 18, 2013. The action by the union, whose members are banned from striking, was to bring attention to overcrowding and safety concerns in French prisons. Protestors set fire to wooden pallets, tires and other objects, and blocked deliveries to the facilities. "This is a shot across the bows, to make the powers be aware of the urgency of the situation," said Union Secretary General Stéphane Barraut.

**Hawaii:** John Joseph Kalei Hall was sentenced to thirteen months in prison on June 27, 2013 after receiving an estimated \$10,000 to \$30,000 in one year for smuggling cartons of cigarettes into Halawa Correctional Facility. Federal prosecutors said Hall sold the tobacco to the United Samoan Organization, a prison gang, and tipped them off to contraband searches. U.S. District Court Judge Helen Gillmor said Hall deserved prison time because he promoted criminal activity he was hired to prevent.

**Honduras:** On August 2, 2013, the Inter-American Commission on Human Rights issued a report stating that control at the nation's 24 prisons had "been ceded

### NEW FRIENDS, HIGHER EDUCATION, AND EMPLOYMENT & HOUSING UPON RELEASE THROUGH WRITEAPRISONER.COM PROFILES

**Contact WriteAPrisoner.com & Start Looking Forward To Mail Call!**

AS SEEN ON  
CNN, 20/20, Fox News,  
Dr. Phil, O Magazine,  
E! True Hollywood,  
and hundreds more!

**WriteAPrisoner.com...**  
Simply the largest, highest ranked, &  
most visited website of its kind!

- Pen-pal Profiles are affordably priced at \$40 for the first year, \$30 for renewing year
- Features a comprehensive search that allows viewers to find your profile by age, race, location, keywords, & more - 32 search options in all
- Your new friends can email their first message to you along with a photo
- Advertises non-stop on every major search engine with thousands of websites linking back to us
- Offers free Reintegration Profiles for inmates seeking employment and housing upon release and education during incarceration
- Translated into 51 languages & geared for international search engines
- Viewers can "subscribe" to your profile to be notified when your profile is updated, blog is added, artwork is posted, poetry is added, your release is near & much more
- Pen-pals have the option of helping you with a broad range of topics using WriteAPrisoner.com's free Self-Help Series

**Get Started Today!**

Friends & family can submit your entire 250 word profile, photo, and payment for you online by visiting

[www.writeaprisoner.com/post](http://www.writeaprisoner.com/post)

Or for a FREE Brochure, Send a S.A.S.E. to:

WriteAPrisoner.com  
PO Box 10- PLN  
Edgewater, FL 32132 USA



Proud member of the Better Business Bureau of Central Florida & the Southeast Volusia Chamber of Commerce.

\*Our website traffic can be independently verified at [www.quantcast.com/writeaprisoner.com](http://www.quantcast.com/writeaprisoner.com)



into the hands of the prisoners themselves.” The next day, Honduras President Porfirio Lobo ordered military troops to take control over the National Penitentiary following a violent disturbance that resulted in three deaths and 15 injuries. Prisons in Honduras are extremely overcrowded and have been cited for poor conditions.

**Illinois:** Timothy Ware, a 20-year veteran guard at the Decatur Correctional Center, was suspended without pay in June 2013 and charged with eight felony counts of official misconduct. Ware allegedly solicited phone numbers from two female parolees, called them repeatedly to pursue personal or social relationships, and then lied to investigators about obtaining the women’s numbers and the nature of the calls. DOC regulations prohibit employees from socializing with parolees. Ware was released from custody after posting a \$2,500 cash bond.

**Indiana:** Marion County Chief Deputy Eva Talley-Sanders said overcrowding may have played a role in the alleged July 24, 2013 rape of a female prisoner by a male prisoner at the Marion County Jail. A deputy returned the male prisoner to a cell block following a court appearance, unaware that a female prisoner had previously been moved to the same block. The female prisoner claimed she was raped but the male prisoner said they had consensual sex. There was no video of the incident. The deputies involved will likely face disciplinary action.

**Libya:** Wissam Ismail Smeida, the head of Al-Ruiymi prison in Ain Zara,

was assassinated on June 25, 2013; it is thought his killers are linked to prisoners at the facility. A month later the assassination of a prominent political activist triggered protests and a riot broke out inside the al-Kwafiya prison, leading to the escape of more than 1,000 prisoners. The AFP news agency quoted a security official who said there had been unrest at the facility prior to the mass breakout.

**Louisiana:** Governor Bobby Jindal issued a commutation to prisoner Shelby Arabie on July 12, 2013, reducing Arabie’s life sentence to 45 years and making him immediately eligible for parole. The rare grant of clemency was one of only a few issued by Jindal; Arabie had been recommended for clemency by Louisiana State Penitentiary Warden Burl Cain. Arabie had been sentenced to life in 1984 for shooting and killing Benny Posey, who robbed him during a drug deal. Arabie still must meet the parole board and receive a favorable parole decision before he is released.

**Mexico:** On August 2, 2013, the Associated Press reported that officials at the Santa Marta Acatitla prison had thwarted an attempt to smuggle a cell phone into the facility in a coffin. Prisoners in Mexico have the right to have the casket of a deceased parent or child delivered to the facility so they can say their farewells. The cell phone was found in the casket of a prisoner’s mother, and city correctional spokesman Emilio Castelazo said criminal charges had been filed.

**Mississippi:** In three separate incidents that occurred between July 14 and

19, 2013, two guards and the 65-year-old mother of a prisoner were arrested as a result of DOC investigations. Ciarra Harley, a 27-year-old guard at the Central Mississippi Correctional Facility (CMCF), is accused of having a sexual relationship with a probationer. Patricia Bennett-Armstrong, also employed at CMCF, was arrested for possession of prohibited items after a large amount of tobacco was found in her vehicle. Further, Gloria Edwards, the mother of a prisoner serving time at the Mississippi State Penitentiary at Parchman, was arrested for allegedly planning to deliver contraband to a prisoner. Edwards was at the facility to see her son but was arrested before the visit; she had several pills concealed on her body and more drugs were found in her vehicle.

**Mississippi:** On June 11, 2013, Harrison County jailers Frederick Corso and Joseph Tuten were fired for their roles in the mistreatment of a prisoner and an attempted cover-up of the abuse. A review of surveillance video confirmed the mistreatment, which was witnessed by a third guard who alerted jail administrators. Although the prisoner did not suffer any injuries, Corso and Tuten were terminated when one participated in the abuse and the other falsified incident reports.

**Montana:** A coroner’s inquest will be held into the shooting death of escaped prisoner Dean Randolph Jess, 42, by a Yellowstone County sheriff’s deputy on July 5, 2013. Jess had been working on a motor vehicle maintenance service call for the Montana State Prison when he escaped.



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription!

Quarterly drawing WINS \$100! (Void in New York)  
(Last Quarter’s winner from Airway Heights, WA.)

**TELL YOUR FRIENDS! ACT NOW!!**



**PO Box 2063 • Fort Walton Beach FL. 32549**

**[www.InmateMagazineService.com](http://www.InmateMagazineService.com)**

## **Inmate Magazine Service**

## News In Brief (cont.)

He stole a Jeep and drove to Billings, where he ended up in a standoff with authorities. Jess was shot by Lt. Shane Skillen when he raised a handgun toward one of the officers surrounding the vehicle. "He may have had it made up in his mind he wasn't going back to prison, one way or another," stated Sheriff Mike Linder.

**Nebraska:** Just prior to a fatal crash on June 25, 2013, authorities received at least three calls warning that a prison van was speeding and running red lights. The Nebraska Department of Correctional Services van was being driven by prisoner Jeremy Dobbe, 35, who had two DUI convictions; he was assigned to the work release driving job two months before the accident. An NDCS press release stated that prisoners have been allowed to drive other prisoners to work detail sites since 1985. Online court records indicate that Dobbe's drunk driving convictions should have disqualified him from the position. He has since been charged with manslaughter, and the family of Joyce R. Meeks, who died after Dobbe struck her vehicle, has filed a \$5 million claim against Dobbe and the State of Nebraska.

**New Hampshire:** Jarred Brisbois, a trusty prisoner, was assigned to wash cruisers

and do other odd jobs at the East Kingston Police Department on May 11, 2013. On that particular day there were no other staff at the department after an officer left on patrol. With no supervision for hours, Brisbois allegedly broke into an evidence room and stole heroin, breached an officer's personal locker containing his gun, Taser and handcuffs, and took a police cruiser for a drive. Investigators also suspect that he smuggled some of the heroin and a hypodermic needle back into the jail. Brisbois had been assigned to the police department through a work program at the Rockingham County Jail. The trusty program has since been temporarily suspended.

**New York:** The wife of a Rikers Island mental health worker was arrested on May 8, 2013 for making death threats to her husband's alleged mistress, another Rikers Island employee. Victoria Beltran, a transsexual actress, suspected an affair after finding unusual credit card charges made by her husband, Brett Bergmann. Furious, Beltran began to pepper the suspected mistress, Katarzyna Sakowicz, with voice-mails and text messages, which Sakowicz reported to authorities. The two women also argued about whether Bergmann knew that Beltran was born a man. Beltran, who was charged with aggravated harassment, said her husband was aware of her sex change operation from the beginning of

their relationship. Bergmann is reportedly filing for divorce.

**New York:** Former Erie County sheriff's deputy Cutolo Buffalo, 54, was charged with pepper spraying a prisoner who was handcuffed and being escorted by two other deputies. The August 2012 incident led to an FBI investigation and Cutolo's termination from the sheriff's department. Cutolo pleaded guilty and was sentenced on August 2, 2013 to six months' home confinement on electronic monitoring plus one year of probation.

**New York:** Nancy Gonzalez, 29, a former guard at the Metropolitan Detention Center (MDC) in Brooklyn, was impregnated by a prisoner at the jail. Gonzalez was arrested in March 2013 and pleaded guilty on July 3, 2013 to having sex with MDC prisoner Ronell Wilson, resulting in the birth of her son, Justus Liam Gonzalez. Defense attorney Anthony Ricco compared the pair's relationship to that of Romeo and Juliet – although unlike the Shakespearean play, Wilson was facing the death penalty for killing NYPD undercover officers Rodney Andrews and James Nemorin during a gun purchase sting in 2003. Gonzalez refused to testify at Wilson's death penalty hearing and he was sentenced to death on July 24, 2013. She lost her parental rights to Justus on November 15, 2013 after drinking alcohol during meetings with Wilson's relatives,

## PLN Classifieds

### AMBLER DOCUMENT PROCESSING

Type, Design and Prepare Manuscripts for Self-Publishing  
Reasonable Rates!-Accept all Genres!  
P.O. Box 938, Norwalk, CT 06852

### H.COX, MS; PRISON CONSULTANT

BOX 1551, WEATHERFORD, TX 76086  
prisonconsultant.com

### MIDNIGHT EXPRESS BOOKS

Typing Services  
Legal docs, manuscripts, etc.  
Send copy w/SASE for return  
To get a quote.  
POBox 69, Berryville, AR 72616

### #1 PHOTO FORWARDING SERVICE

**\*\*SPECIAL\*\*** \$25.00 for 60 Photos!  
Email & Text your photos 2 us  
We Print & Mail them 2 YOU!  
www.infolincs.com (4 more info)  
Email: infolincs@centurylink.net  
Check/\$\$ Order: InfoLINC, LLC  
PO Box 644, Shady Cove, OR 97539

### The VOICES.CON Newsletter – Free

Written by lifers for lifers. For info on how to receive Voices.Con monthly, send SASE to: PO Box 361, King City, CA 93930.  
On the web at: VoicesDotCon.org;  
Email: Publisher@VoicesDotCon.org

### IF YOU WANT THE BEST TRY EPS!

Legal Research & Forms, Internet & People Searches, Amazon Books, Erotic Photos, PenPals, Special Requests and More. Send SASE to: Elite Paralegal & Prisoner Services  
PO Box 1717, Appleton, WI 54912

### Ibrahim Books & Gifts

PO Box 4141, Phila, PA 19144  
Ph.267-586-3309 ibrahimbooks.com  
\*Islamic Gift Baskets\*CD's\*DVD's  
Quality Service\*Affordable Rates  
Write for FREE catalog  
Your resource for authentic books  
According to The Qur'aan&Sunnah

### CHRISTIAN PRISON PEN PALS/ OUTLAWS ONLINE, PO Box 333,

Inverness, Florida 34451. Checks/M.O. payable to Inmate Services Request Information Photo, Desc., 400 word bio \$25

### Want Quality Pictures of

Quality Babes? 4x6 High Res pics  
Send self addressed stamped envelope for free catalog!  
PHOTO TRYST  
PO Box 103  
Chapmansboro TN 37035



which violated a condition of her bail.

**New Zealand:** In July 2013, a New Zealand court ruled against a challenge to the country's ban on tobacco in prisons, holding that the prison system would remain smoke-free. The decision also means that prisoners who have sought compensation for smoking-related offenses will have no recourse. The ban, which was instituted in July 2011, was preceded by an extensive 12-month campaign to encourage prisoners to quit. For many prisoners, giving up smoking has led to better health and cost savings.

**North Carolina:** A former guard at the Rivers Correctional Institution, Rhonda Boyd, was sentenced on July 11, 2013 to 20 months in prison followed by two years of supervised release for her involvement in accepting payments for smuggling cigarettes into the facility. The investigation was conducted by the U.S. Department of Justice, the Office of Inspector General, the FBI and the U.S. Postal Inspection Service. [See: *PLN*, Jan. 2013, p.24].

**Ohio:** A part-time North Royalton jail guard who was serving as a probation officer for the Parma Municipal Court was sentenced to three years in prison on June 17, 2013. Michael A. Maresh, 26, was charged with having non-consensual sex

with a woman who was reporting to him as a probationer; he was found guilty of two counts of sexual battery stemming from the June 2012 incident.

**Oklahoma:** In May 2013, Department of Corrections employees from across the state marched on the Capitol demanding a pay increase. They said it had been seven years since they last received a raise and complained that they deserve better. The governor's communications director, Alex Weintz, said the governor was not comfortable giving the department any additional funding until the manner in which it accounts for those funds becomes more accurate, more transparent or both. "Governor Fallin knows there are many hardworking public servants at DOC, and she respects the work they do," stated Weintz. "Their leadership has not served them well by failing to fully and accurately disclose the agency's finances."

**Oklahoma:** Darren "Veneno" Padron, 22, is one of six prisoners accused of planning and carrying out the June 13, 2012 stabbing death of fellow prisoner Sonny J. Limpy, 25, at the GEO Group-operated Lawton Correctional Facility. On July 18, 2013, Padron pleaded guilty to his role in the murder and was sentenced to an addi-

tional 10 years in prison with five suspended. Also charged were Alonzo "Coon" Florez, Gerardo "Guito" Sanduval, Jose Garcia, Ryan "Frankie" Garcia and Armando Luna. Testimony indicated that the killing was ordered after Limpy refused to join "The 13 Movement," an initiative to unify all Hispanic gangs under one leadership.

**Oklahoma:** On July 10, 2013, a prisoner at the Tulsa County Jail was found unresponsive during security checks. A nurse who rushed to treat him experienced a sudden cardiac medical emergency and had to be taken to a local hospital. Despite resuscitation efforts by jail staff and the Tulsa Fire Department, prisoner Brian Keith Perry, 41, was pronounced dead. Investigators from the Sheriff's Department ruled out foul play and Perry's death is believed to be a suicide. The nurse was admitted to the hospital for treatment.

**Pakistan:** On July 29, 2013, militants attacked a prison in northwest Pakistan and reportedly freed more than 250 prisoners. Pakistani Taliban spokesman Shahidullah Shahid claimed responsibility for the assault and said 150 militants took part. Officials had received a letter threatening an attack on the facility, but did not expect one so soon. The militants arrived by car

#### **MIDNIGHT EXPRESS BOOKS**

Helping inmate authors publish books. You'll always get more than you pay for with us. If you have not been to our website please check us out. POBox 69 Dept. PLN Berryville AR 72616 midnightexpressbooks.com

#### **The Holidays Are Coming!!**

And we make buying gifts fun. Find out about our popular gift services by contacting us today. Receive your free catalog; INTiMATE LOVE, LLC PO BOX 1153, New York, NY 10039 info@intimatelovegifts.com

#### **Education Behind Bars Newsletter**

A free, educational newsletter of interest to incarcerated students. Write to be added to the mailing list: EBBN Editor 3900 Pelandale Avenue, Box 319 Modesto, CA 95356 www.PrisonEducation.com

#### **SURROGATE SISTERS**

Celebrating 18+Years in Business No Games. We Sell Photos of Sexy Women, Gifts for Loved Ones, Erotic Stories & Pen-Pal Service Free Info & Flyer Send SASE to: Surrogate Sister - PN PO Box 95043, Las Vegas NV 89193

#### **Prisonerinmatefamilyservice.com**

Send a SASE for a free catalog; PO Box 1852 Pismo Beach, Ca 93448 We buy stamps- 7.50 a book; Single stamps .25 cents; Amazon Orders, copies of photos/artwork And SO much more! FamilyInmateSev@aol.com

#### **LOCAL PHONE NUMBERS \$2.50/MO.**

USA anywhere 5¢/min. To MX 15¢ Great rates all over the world! No signup fee, no hidden fees! Refer new cust, 300 free mins! [www.FreedomLine.net](http://www.FreedomLine.net) to sign up or write FreedomLine, Box 7-WCB C'ville IN 47331. Save BIG \$\$\$!

#### **A DEGREE/ORDINATION FROM PRISON**

Correspondence Courses via mail INT'L CHRISTIAN COLLEGE&SEMINARY PO BOX 530212 Debary, FL 32753-0212 Associates thru PhD credit for Life Experience \*ACCREDITED\* Tuition as Low as \$19.95 a month Send SASE for a Free Evaluation

#### **Celebrity Photos For Sale:**

Send self addressed stamped envelope for lists. Name stars you would like to order photos of. Start your collection today! Photoworld-PLN PO Box 401016 Las Vegas, Nv. 89140

#### **ELIJAHRAY.COM Gift Service**

Center. Brand new catalog 120 Gifts. Send \$2 or four stamps to ELIJAHRAY.COM PO Box 3008 La Grande, OR 97850. Real Gold, Toys, Bath Sets, and MORE! No One Does It Like We Do! Sending Home a Little 1 Gift at a Time.

and motorcycle, then began a 4½ hour assault on the prison using bombs, grenades and guns. Some of the attackers, wearing police uniforms, used megaphones to call out the names of specific prisoners. Six police officers, six prisoners and two civilians were killed, including one prisoner who was beheaded.

**Pennsylvania:** On June 18, 2013, Malik James Hayes, 25, a former York County prisoner, pleaded guilty to involuntary

manslaughter for the beating death of Jesus Maldonado-Martinez. The fatal August 21, 2011 incident began as a fistfight after Maldonado-Martinez bumped into Hayes and did not say "excuse me." Hayes' attorney said his client did not mean to kill the victim, and that it was a mutual fight that "got out of hand." Hayes will serve an additional 2½ years in prison for the fatal beating upon completion of his 7½-to-15-year sentence for robbery.

**Tennessee:** When Brita West arrived at a jail in Scott County to marry Willard Tinch on July 28, 2013, it was apparently

a match made in heaven. Tinch was imprisoned at the jail, and West was arrested for trying to smuggle contraband to him. Deputies noticed that West's dentures were falling down and that she had a small package in her mouth, which she apparently planned to pass to Tinch when they kissed following their nuptials. The package contained suboxone and methamphetamine; a search of West's vehicle revealed more meth as well as syringes. She was charged with possession of drugs and drug paraphernalia, and jailed with a \$25,000 bond. Presumably there was no honeymoon.

## Criminal Justice Resources

### **ACLU National Prison Project**

Handles state and federal conditions of confinement claims affecting large numbers of prisoners. Publishes the NPP Journal (available online at: [www.aclu.org/national-prison-project-journal-fall-2011](http://www.aclu.org/national-prison-project-journal-fall-2011)) and the Prisoners' Assistance Directory (write for more information). Contact: ACLU NPP, 915 15th St. NW, 7th Fl., Washington, DC 20005 (202) 393-4930. [www.aclu.org/prisons](http://www.aclu.org/prisons)

### **Amnesty International**

Compiles information about prisoner torture, beatings, rape, etc. to include in reports about U.S. prison conditions; also works on death penalty issues. Contact: Amnesty International, 5 Penn Plaza, New York NY 10001 (212) 807-8400. [www.amnestyusa.org](http://www.amnestyusa.org)

### **Center for Health Justice**

Formerly CorrectHELP. Provides information related to HIV in prison – contact them if you are not receiving proper HIV medication or are denied access to programs due to HIV status. Contact: CHJ, 900 Avila Street, Suite 102, Los Angeles, CA 90012. HIV Hotline: (214) 229-0979 (collect calls from prisoners OK). [www.centerforhealthjustice.org](http://www.centerforhealthjustice.org)

### **Centurion Ministries**

Works to exonerate the wrongfully convicted, in both cases involving DNA evidence and those that do not. Centurion only takes 1-2 new cases a year involving actual innocence. They do not consider accidental death or self-defense murder cases, he said/she said rape cases, or child abuse or child sex abuse cases unless there is physical evidence. All case inquiries must be from the prisoner involved, in writing. Contact: Centurion Ministries, 221 Witherspoon Street, Princeton, NJ 08542 (609) 921-0334. [www.centurionministries.org](http://www.centurionministries.org)

### **Critical Resistance**

Seeks to build an international movement to abolish the Prison Industrial Complex, with offices in Florida, California, New York, Texas and Louisiana. Publishes The Abolitionist newsletter. Contact: Critical Resistance, 1904 Franklin Street #504, Oakland, CA 94612 (510) 444-0484. [www.criticalresistance.org](http://www.criticalresistance.org)

### **The Exoneration Project**

The Exoneration Project is a non-profit organization dedicated to working to free prisoners who were wrongfully convicted. The Project represents innocent individuals in post-conviction legal proceedings; typical cases involve DNA testing, coerced confessions, police misconduct, the use of faulty evidence, junk science and faulty eyewitness testimony, and ineffective assistance of counsel claims. Contact: The Exoneration Project, 312 North May Street, Suite 100, Chicago, Illinois 60607 (312) 789-4955. [www.exonerationproject.org](http://www.exonerationproject.org)

### **Family & Corrections Network**

Primarily provides online resources for families of prisoners related to parenting, children of prisoners, prison visitation, mothers and fathers in prison, etc. Contact: F&CN, 93 Old York Road, Suite 1 #510, Jenkintown, PA 19046 (215) 576-1110. [www.fcnetwork.org](http://www.fcnetwork.org)

### **FAMM**

FAMM (Families Against Mandatory Minimums) publishes the FAMMgram three times a year, which includes information about injustices resulting from mandatory minimum laws with an emphasis on federal laws. Recommended donation of \$10 for a subscription. Contact: FAMM, 1612 K Street NW #700, Washington, DC 20006 (202) 822-6700). [www.famm.org](http://www.famm.org)

### **The Fortune Society**

Provides post-release services and programs for prisoners in the New York City area and occasionally publishes Fortune News, a free publication for prisoners that deals with criminal justice issues, primarily in New York. Contact: The Fortune Society, 29-76 Northern Blvd., Long Island City, NY 11101 (212) 691-7554. [www.fortunesociety.org](http://www.fortunesociety.org)

### **Innocence Project**

Provides advocacy for wrongly convicted prisoners whose cases involve DNA evidence and are at the post-conviction appeal stage. Maintains an online list of state-by-state innocence projects. Contact: Innocence Project, 40 Worth St., Suite 701, New York, NY 10013 (212) 364-5340. [www.innocenceproject.org](http://www.innocenceproject.org)

### **Just Detention International**

Formerly Stop Prisoner Rape, JDI seeks to end sexual violence against prisoners. Provides counseling resources for imprisoned and released rape survivors and activists for almost every state. Contact: JDI, 3325 Wilshire Blvd. #340, Los Angeles, CA 90010 (213) 384-1400. [www.justdetention.org](http://www.justdetention.org)

### **Justice Denied**

Although no longer publishing a print magazine, Justice Denied continues to provide the most comprehensive coverage of wrongful convictions and how and why they occur. Their content is available online, and includes all back issues of the Justice Denied magazine and a database of more than 3,000 wrongly convicted people. Contact: Justice Denied, P.O. Box 68911, Seattle, WA 98168 (206) 335-4254. [www.justicedenied.org](http://www.justicedenied.org)

### **National CURE**

Citizens United for Rehabilitation of Errants (CURE) is a national organization with state and special interest chapters that advocates for rehabilitative opportunities for prisoners and less reliance on incarceration. Publishes the CURE Newsletter. \$2 annual membership for prisoners. Contact: CURE, P.O. Box 2310, National Capitol Station, Washington, DC 20013 (202) 789-2126. [www.curenational.org](http://www.curenational.org)

### **November Coalition**

Publishes the Razor Wire, a bi-annual newsletter that reports on drug war-related issues, releasing prisoners of the drug war and restoring civil rights. A subscription is \$10 for prisoners and \$30 for non-prisoners. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 684-1550. [www.november.org](http://www.november.org)

### **Prison Activist Resource Center**

PARC is a prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, able-ism, heterosexism and classism, specifically within the Prison Industrial Complex. PARC produces a free resource directory for prisoners, and supports activists working to expose and end the abuses of the Prison Industrial Complex and mass incarceration. Contact: PARC, P.O. Box 70447, Oakland, CA 94612 (510) 893-4648. [www.prisonactivist.org](http://www.prisonactivist.org)

# Prison Legal News Book Store

Fill in the boxes next to each book you want to order, indicating the quantity and price. Enter the Total on the Order Form on the next page.  
**FREE SHIPPING on all book / index orders OVER \$50 (effective 9-1-2013 until further notice). \$6.00 S/H applies to all other book orders.**

## SUBSCRIBE TO PLN FOR 4 YEARS AND CHOOSE ONE BONUS!

1. **SIX (6) FREE ISSUES FOR 54 TOTAL! OR**
2. **PRISON PROFITEERS (A \$24.95 VALUE!) OR**
3. **WITH LIBERTY FOR SOME (AN \$18.95 VALUE!)**

**Prison Profiteers**, edited by Paul Wright and Tara Herivel, 323 pages. **\$24.95.** This is the third book in a series of Prison Legal News anthologies that examines the reality of mass imprisonment in America. *Prison Profiteers* is unique from other books because it exposes and discusses who profits and benefits from mass imprisonment, rather than who is harmed by it and how. 1063

**With Liberty for Some: 500 Years of Imprisonment in America**, by Scott Christianson, Northeastern University Press, 372 pages. **\$18.95.** The best overall history of the American prison system from 1492 through the 20th Century. A must-read for understanding how little things have changed in U.S. prisons over hundreds of years. 1026

**Prison Nation: The Warehousing of America's Poor**, edited by Tara Herivel and Paul Wright, 332 pages. **\$35.95.** PLN's second anthology exposes the dark side of the 'lock-em-up' political agenda and legal climate in the U.S. 1041

**The Ceiling of America, An Inside Look at the U.S. Prison Industry**, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. **\$22.95.** PLN's first anthology presents a detailed "inside" look at the workings of the American justice system. 1001

**Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada**, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, PLN Publishing, 221 pages. **\$49.95.** Written by Missouri prisoner Jon Marc Taylor, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, para-legal and college courses by mail. 1071

**The Criminal Law Handbook: Know Your Rights, Survive the System**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 608 pages. **\$39.99.** Explains what happens in a criminal case from being arrested to sentencing, and what your rights are at each stage of the process. Uses an easy to understand question-and-answer format. 1038

**Represent Yourself in Court: How to Prepare & Try a Winning Case**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 528 pages. **\$39.99.** Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. The authors explain what to say in court, how to say it, etc. 1037

**Law Dictionary**, Random House Webster's, 525 pages. **\$19.95.** Comprehensive up-to-date law dictionary explains more than 8,500 legal terms. Covers civil, criminal, commercial and international law. 1036

**The Blue Book of Grammar and Punctuation**, by Jane Straus, 110 pages. **\$14.95.** A guide to grammar and punctuation by an educator with experience teaching English to prisoners. 1046

**Legal Research: How to Find and Understand the Law**, by Stephen Elias and Susan Levinkind, 568 pages. **\$49.99.** Comprehensive and easy to understand guide on researching the law. Explains case law, statutes and digests, etc. Includes practice exercises. 1059

**Deposition Handbook**, by Paul Bergman and Albert Moore, Nolo Press, 352 pages. **\$34.99.** How-to handbook for anyone who conducts a deposition or is going to be deposed. 1054

**Criminal Law in a Nutshell**, by Arnold H. Loewy, 5th edition, 387 pages. **\$43.95.** Provides an overview of criminal law, including punishment, specific crimes, defenses & burden of proof. 1086

## SUBSCRIBE TO PLN FOR 3 YEARS AND CHOOSE ONE BONUS!

1. **FOUR (4) FREE ISSUES FOR 40 TOTAL! OR**
2. **PROTECTING YOUR HEALTH AND SAFETY (A \$10.00 VALUE!)**

**Protecting Your Health and Safety**, by Robert E. Toone, Southern Poverty Law Center, 325 pages. **\$10.00.** This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how to enforce your rights, including through litigation. 1060

**Spanish-English/English-Spanish Dictionary**, 2nd ed. Random House. **\$15.95.** Spanish-English and English-Spanish. 60,000+ entries from A to Z; includes Western Hemisphere usage. 1034a

**Writing to Win: The Legal Writer**, by Steven D. Stark, Broadway Books/Random House, 283 pages. **\$19.95.** Explains the writing of effective complaints, responses, briefs, motions and other legal papers. 1035

**Actual Innocence: When Justice Goes Wrong and How to Make it Right**, updated paperback ed., by Barry Scheck, Peter Neufeld and Jim Dwyer, 403 pages. **\$16.00.** Describes how criminal defendants are wrongly convicted. Explains DNA testing and how it works to free the innocent. Devastating critique of police and prosecutorial misconduct. 1030

**Webster's English Dictionary**, Newly revised and updated, Random House. **\$8.95.** 75,000+ entries. Includes tips on writing and word usage, and has updated geographical and biographical entries. Includes recent business and computer terms. 1033

**Everyday Letters for Busy People**, by Debra Hart May, 287 pages. **\$18.99.** Hundreds of sample letters that can be adapted for most any purpose, including letters to government agencies and officials. Has numerous tips for writing effective letters. 1048

**Roget's Thesaurus**, 717 pages. **\$8.95.** Helps you find the right word for what you want to say. 11,000 words listed alphabetically with over 200,000 synonyms and antonyms. Sample sentences and parts of speech shown for every main word. Covers all levels of vocabulary and identifies informal and slang words. 1045

**Beyond Bars, Rejoining Society After Prison**, by Jeffrey Ian Ross, Ph.D. and Stephen C. Richards, Ph.D., Alpha, 240 pages. **\$14.95.** *Beyond Bars* is a practical and comprehensive guide for ex-convicts and their families for managing successful re-entry into the community, and includes information about budgets, job searches, family issues, preparing for release while still incarcerated, and more. 1080

**Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A.**, by Mumia Abu Jamal, City Lights Publishers, 280 pages. **\$16.95.** In *Jailhouse Lawyers*, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned-advocates who have learned to use the court system to represent other prisoners. 1073

**The Habeas Citebook: Ineffective Assistance of Counsel**, by Brandon Sample, PLN Publishing, 200 pages. **\$49.95.** This is PLN's second published book, written by federal prisoner Brandon Sample, which covers ineffective assistance of counsel issues in federal habeas petitions. Includes hundreds of case citations! 1078

**Complete GED Preparation**, by Steck-Vaughn, 922 pages. **\$24.99.** This useful handbook contains over 2,000 GED-style questions to thoroughly prepare students for taking the GED test. It offers complete coverage of the revised GED test with new testing information, instructions and a practice test. 1099

**\* ALL BOOKS SOLD BY PLN ARE SOFTCOVER / PAPERBACK \***

**Hepatitis and Liver Disease: What You Need to Know**, by Melissa Palmer, MD, 457 pages. **\$17.95.** Describes symptoms & treatments of hepatitis B & C and other liver diseases. Includes medications to avoid, what diet to follow and exercises to perform, plus a bibliography. 1031 ☐

**Arrested: What to Do When Your Loved One's in Jail**, by Wes Denham, 240 pages. **\$16.95.** Whether a defendant is charged with misdemeanor disorderly conduct or first-degree murder, this is an indispensable guide for those who want to support family members, partners or friends facing criminal charges. 1084 ☐

**Prisoners' Self-Help Litigation Manual**, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 960 pages. **\$39.95.** The premiere, must-have "Bible" of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Highly recommended! 1077 ☐

**How to Win Your Personal Injury Claim**, by Atty. Joseph Matthews, 7th edition, NOLO Press, 304 pages. **\$34.99.** While not specifically for prison-related personal injury cases, this book provides comprehensive information on how to handle personal injury and property damage claims arising from accidents. 1075 ☐

**Sue the Doctor and Win! Victim's Guide to Secrets of Malpractice Lawsuits**, by Lewis Laska, 336 pages. **\$39.95.** Written for victims of medical malpractice/neglect, to prepare for litigation. Note that this book addresses medical malpractice claims and issues in general, not specifically related to prisoners. 1079 ☐

**Advanced Criminal Procedure in a Nutshell**, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **\$43.95.** This text is designed for supplemental reading in an advanced criminal procedure course on the post-investigation processing of a criminal case, including prosecution and adjudication. 1090 ☐

**Our Bodies, Ourselves**, by The Boston Women's Health Book Collective, 944 pages. **\$26.00.** This book about women's health and sexuality has been called "America's best-selling book on all aspects of women's health," and is a great resource for women of all ages. 1082 ☐

**Arrest-Proof Yourself**, by Dale Carson and Wes Denham, 288 pages. **\$14.95.** This essential "how not to" guide written by an ex-cop explains how to act and what to say when confronted by the police to minimize the chances of being arrested and avoid additional charges. Includes information on basic tricks that police use to get people to incriminate themselves. 1083 ☐

**Nolo's Plain-English Law Dictionary**, by Gerald N. Hill and Kathleen T. Hill, 496 pages. **\$29.99.** Find terms you can use to understand and access the law. Contains 3,800 easy-to-read definitions for common (and not so common) legal terms. 3001 ☐

**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFave, 7th edition, 603 pages. **\$43.95.** Intended for use by law students, this is a succinct analysis of constitutional standards of major significance in the area of criminal procedure. 1085 ☐

**A Dictionary of Criminal Law Terms** (Black's Law Dictionary® Series), by Bryan A. Garner, 768 pages. **\$33.95.** This handbook contains police terms such as preventive detention and protective sweep, and phrases from judicial-created law such as independent-source rule and open-fields doctrine. A good resource to help navigate your way through the maze of legal language in criminal cases. 1088 ☐

**PLN Cumulative Index. \$22.50 each.** PLN Article Indexes provide detailed information about all PLN articles, including title, author, issue, page number, topics covered, citations, and if it is state, BOP or jail specific. Can be searched on over 500 subjects such as medical neglect or sexual assault. Circle the index(es) you are ordering: **1990-1995, 1996-1998, 1999-2001, 2002-2004** (more recent indexes not yet available) ☐

### Subscription Rates

	1 year	2 years	3 years	4 years
<b>Prisoners</b>	<b>\$30</b>	<b>\$ 60</b>	<b>\$ 90</b>	<b>\$120</b>
<b>Individuals</b>	<b>\$35</b>	<b>\$ 70</b>	<b>\$105</b>	<b>\$140</b>
<b>Professionals</b>	<b>\$90</b>	<b>\$180</b>	<b>\$270</b>	<b>\$360</b>

(Attorneys, agencies, libraries)

### Subscription Bonuses

- 2 years** - 2 bonus issues for 26 total issues  
**3 years** - 4 bonus issues (40 total) or a bonus book as listed on pg. 61  
**4 years** - 6 bonus issues (54 total) or a bonus book as listed on pg. 61

(All subscription rates and bonus offers are valid as of 9-1-2013)



Purchase with Visa, MasterCard, AmEx or Discover by phone: **561-360-2523**

Or buy books and subscriptions online: **www.prisonlegalnews.org**



### Mail Payment and Order to:

Prison Legal News  
P.O. Box 1151  
Lake Worth, FL 33460

**All purchases must be pre-paid. Prisoners can pay with new first-class stamps (strips or books only, no loose stamps) or pre-stamped envelopes, if allowed by institutional policies.**

Please **Change my Address** to what is entered below ☐

### Mail Order To:

Name: \_\_\_\_\_  
 DOC #: \_\_\_\_\_  
 Suite/Cell: \_\_\_\_\_  
 Agency/Inst: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_

### Subscribe to Prison Legal News

### \$ Amount

6 month subscription (prisoners only) - \$18 \_\_\_\_\_  
 1 yr subscription (12 issues) \_\_\_\_\_  
 2 yr subscription (2 bonus issues for 26 total!) \_\_\_\_\_  
 3 yr sub (*write below which FREE book you want*) \_\_\_\_\_  
     or 4 bonus issues for 40 issues total! \_\_\_\_\_  
 4 yr sub (*write below which FREE book you want*) \_\_\_\_\_  
     or 6 bonus issues for 54 issues total! \_\_\_\_\_  
 Random sample issue of PLN - \$3.50 each \_\_\_\_\_

### Books or Index Orders

(No S/H charge on 3 & 4-year sub free books OR book orders OVER \$50!)

### Qty.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Add \$6.00 S/H to Book Orders UNDER \$50**

**FL residents ONLY add 6% to Total Book Cost**

**Total Amount Enclosed:**

\_\_\_\_\_

**\* No refunds on PLN subscription or book / index orders after orders have been placed \***



# 3RD STRIKE? WRONGLY CONVICTED? ERRORS?

ATTENTION!! CA 3<sup>RD</sup> STRIKERS DON'T BE LEFT OUT OR WAIT FOR THE SYSTEM. WE CAN HELP!

## INMATE LEGAL HELP 411 FREEDOM ANGELS

Brian P - "They helped me remove 4 life sentences  
"Big" D McGwen - Back into Court.. And SET FREE  
Tyron S. - 38 years deducted.. FREE NOW!

**PERSONALIZED & REASONABLY PRICED  
ADVANCED LEGAL SERVICES  
SUCCESSFUL WINNING STRATEGIES  
EVEN YOUR ODDS**



We find the **MISSING** facts & information that were never considered or heard in your case originally.

**OUR GOAL= Evidentiary Hearing for YOU!**

**MAKE FREEDOM A PRIORITY?**

**HAVE FAMILY / FRIENDS CALL NOW  
PLANHELP@411FreedomANGELS.com**

**HABEAS Booklet ~ \$20 PayPal or Stamps**

**www.411FreedomANGELS.com**



*You are in our thoughts and prayers*

**WRITS~MOTIONS~BRIEFS  
3<sup>RD</sup> STRIKERS GO to TOP of the List**

- Post Conviction Relief Assistance
- Writ Of Habeas Corpus-State / Federal
- Sentence Modifications
- Pre-Post Parole Board
- In House Legal Investigators
- Resolve Warrants on pending cases
- **MANY Other Legal Services**



**AGGRESSIVE REPRESENTATION to PROTECT YOUR RIGHTS  
JACKSON & ASSOCIATES LAW CENTERS  
402 W. Broadway POB 81609 San Diego, CA 92138  
24/7 call NOW! 1\*855\*411\*ANGELS (2643)**



# PRISONLEGALNEWS.org

**Dedicated to Protecting Human Rights**

>>FREE Data Search |

Decisions

Investigations

Audits

Publications

Cases

Verdicts

Settlements

**If you need to know about prisons and jails or are litigating a detention facility case, you can't afford not to subscribe to our website!**

**Online subscribers get unlimited, 24-hour a day access to the website and its content!**



**Sign up for PLN's FREE listserv to**

**receive prison and jail news and court rulings by e-mail.**

- ▶ PLN's website offers all issues of PLN in both searchable database and PDF formats. Issues are indexed and posted as soon as they go to press.
- ▶ Publications section has numerous downloadable government reports, audits and investigations from around the country.
- ▶ Full text decisions of thousands of court cases, published and unpublished.
- ▶ All content is easy to print for downloading and mailing to prisoners.
- ▶ Most complete collection of prison and jail related verdicts and settlements anywhere.
- ▶ Order books, print subscriptions and make donations on line.

- ▶ Brief bank with a wide assortment of winning motions, briefs, complaints and settlements.
- ▶ Links to thousands of prison, jail, criminal justice and legal websites around the world.
- ▶ Thousands of articles and cases, all fully indexed by more than 500 subjects, searchable by case name, case year, state of origin, court, author, location, case outcome, PLN issue and key word search.
- ▶ Search free, pay only if you find it!
- ▶ The highest quality, most comprehensive prison litigation news and research site in the world.

**Affordable rates to meet your budget  
\$19.95 per month • \$149.95 per year**

**Subscribe to Prison Legal News Online! <http://www.prisonlegalnews.org>**



## Prison Legal News

PO Box 1151  
Lake Worth FL 33460

Change Service Requested

Non-Profit Org.  
U.S. Postage  
PAID  
Portland OR  
Permit No. 3142

### Subscription Renewal

Subscriptions expire after the issue shown on the label is mailed. For example, if the label says: EXPIRES 02/2015, then the subscription expires after the February 2015 issue is mailed. Please renew at least 2 months before the expiration date. IF THE LABEL SAYS **EXPIRES: 01/2014** THIS IS YOUR LAST ISSUE. Please renew immediately to avoid missing any issues.

### Change of Address

If you move or are transferred, please notify PLN as soon as possible so your issues can be mailed to your new address! PLN only accepts responsibility for sending an issue to the address provided at the time an issue is mailed!



#### ARE YOU FRUSTRATED BECAUSE OF THE HIGH COST OF YOUR PHONE CALLS?

Our company **ICCALLS** is here to provide you **excellent service** at very **low rates**.

We have different plans to accommodate for the one that best fits your needs.

Right now we have a promotion of one month **absolutely FREE** for new subscribers. Just provide us the promo code: **PLNICCALLS1\*** Please contact **ICCALLS** to find out how this special promotion works, for either **US** or **INTERNATIONAL** calls. If you are already a customer, contact us to find out how to earn points by referring new customers to the service and get **FREE minutes** every month.

**ICCALLS** also provides you the service of money transfers directly to your commissary's account. You can receive up to **\$300.00** per transaction paying only **\$9.95** using your Debit/Credit Card or your Pay Pal Account.

#### DO NOT WAIT ANY LONGER AND CONTACT US:

Phone:	1(888)718-1595	Monday to Friday
	1(310)496-8292	9:00 AM to 5:00 PM CT
Fax:	1(323)210-7458	9:00 AM to 5:00 PM CT
E-mail:	c.service@iccalls.com	We will be able to assist you
	support@iccalls.com	in English, Spanish, Portuguese,
	www.iccalls.com	and Hebrew.
Mail to:	ICCALLS, LLC	
	P.O. Box 3674	
	Huntington Park, CA 90255	

#### LLAMENOS Y COMIENCE

A AHORRAR DINERO EN

SUS LLAMADAS!!!!



\*RESTRICTIONS APPLY

2010-2013 ICCALLS, LLC



# Prison Legal News

VOL. 25 No. 2  
ISSN 1075-7678

*Dedicated to Protecting Human Rights*

February 2014

## Violence, Security Lapses and Media Attention Lead to Reforms at Georgia Prison

*by David Reutter*

A SERIES OF INVESTIGATIVE NEWS REPORTS by *Chattanooga Times Free Press* reporter Joy Lukachick, published from February to December 2013, revealed numerous problems in Georgia's prison system – particularly at Hays State Prison (HSP), located around 40 miles south of Chattanooga, Tennessee – and resulted in lawsuits, security improvements and the replacement of HSP's warden.

While violence has increased in Georgia prisons over the last several years, it was not until four HSP prisoners were murdered within a two-month period that the media began to take notice. Prison officials blamed gangs and contraband cell phones for the spike in violence, but guards faulted

their bosses, saying they were more focused on their careers than security.

Since 2010, at least 26 Georgia state prisoners have been slain by other prisoners; four HSP prisoners were killed from December 19, 2012 to February 5, 2013 alone.

Non-fatal assaults on staff and prisoners have been increasing, too. The Georgia State Prison has the highest number of incidents, with 251 prisoner-on-staff assaults in 2012 – an average of 21 per month. Guards have reciprocated the violence, reporting 265 uses of force on prisoners over the same time period. The Georgia Diagnostic and Classification Prison (GDCP) – the state's highest security facility – reported 86 prisoner-on-staff assaults in 2012, the second-highest in the state.

There were signs of trouble in Georgia's prison system before the spate of murders at HSP. At Telfair State Prison, two prisoners were killed between August and October 2012, while six prisoners were murdered over two years of escalating violence at Smith State Prison. Further, two guards were stabbed by HSP prisoner Brian Dukes in February 2012, and guard Larry Stell, 46, was murdered in a dormitory area at Telfair on October 11, 2012.

Conditions became so violence-prone that Georgia Department of Corrections (GDOC) Commissioner Brian Owens changed his number one priority from optimizing bed space in 2012 to "operating safe and secure facilities" in 2013.

"We have never seen violence in GDOC like we've seen in the last 1½ years," observed Sarah Geraghty, a senior attorney with the Atlanta-based Southern Center for Human Rights (SCHR), which called for

an independent investigation into violence at HSP. The SCHR also filed suit against the GDOC for violations of the state's Open Records Act, after prison officials demanded over \$250,000 to produce documents related to security issues and prisoner deaths at Hays State Prison.

Another prior indicator of systemic problems in Georgia's prison system was a December 9, 2010 peaceful protest and work strike by GDOC prisoners who demanded better food, an end to unpaid labor, improved conditions of confinement and respect for basic human rights. The protest resulted in a violent crackdown by prison staff. [See: *PLN*, Jan. 2011, p.24].

### Shakedowns and Pizza

"THIS NUMBER OF MURDERS CAN BE LINKED directly to inadequate and forewarned shakedowns at Hays State Prison," said an unidentified 30-year veteran guard, referring to the multiple killings at HSP. "Laws were and are being broken by telling inmates to hide their weapons so the tactical squads can't find them. Enough is enough."

Guards use the element of surprise to help them find contraband, which is often secreted in creative hiding places. Policy specifies that shakedowns should be performed at regular intervals but in a pattern prisoners cannot deduce.

The GDOC requires wardens to submit a monthly report documenting the number of weapons, cell phones and drugs found at their facility. "This is your report card. This is how you're judged," one prison official recalled being told at a wardens' meeting. "They don't want to get in trouble. They're looking at their own careers." Thus,

## INSIDE

From the Editor	8
Prison Phone Update	10
Reversals in Second Circuit	12
Private Prison Recidivism	14
Confronting Slave Labor Camps	16
PLN Settles TX Jail Suit	22
Arrested Book Review	28
Medical Parole in Texas	30
Private Prisons Annual Awards	38
Criminal Background Checks	40
No More Jails Campaign in IL	44
Invisible Scars of Solitary	48
News in Brief	56

## DON'T LET THE TIME DO YOU. STAY CONNECTED!

**Guaranteed savings of up to 90%** on your long distance, out-of-state, and international calls from Federal prisons, county jails and State prisons.

### Best Rates and Plans

Multi-number Friends & Family Package for as little as \$10.00/month

More plans & more numbers than any operator -

### No Hidden Fees

**What We Say Is What You Pay** – NO additional “fees”, “charges” or “surcharges”

International calls are billed only on call acceptance. No bogus rounding

### No Contracts, No Penalties, No Hassles

No long term commitments – Service is always month – to – month. Cancel at anytime with NO penalties and NO cancellation fees with just a phone call or an e-mail.

### Fast and EZ Setup

We **ALWAYS** have numbers and can set up instantaneously online or on the phone.

## Special Commitment, Civil Detention & Halfway House

\$0.40 connection charge from payphones  
lowest in the business

Voice Mail and Call Recording options

Call, write, e-mail or have your loved ones check out our website for more information.

SP Telecom  
1220 Broadway - # 801-A  
New York, NY 10001  
[www.inmatefone.com](http://www.inmatefone.com)  
e-mail: [clients@inmatefone.com](mailto:clients@inmatefone.com)  
Español: [soporte@inmatefone.com](mailto:soporte@inmatefone.com)  
Call: 1(845)326-5300 (Collect calls are NOT accepted)  
Español: 1(845)342-8110 (Llamadas por cobrar no se aceptan)

Some restrictions apply. Plan availability depends on the Institution

## NO PERMITA QUE EL TIEMPO LE SEPRE DE SU FAMILIA!

**Garantizamos ahorros de hasta el 90%** en sus llamadas de larga distancia, entre estados, y en las llamadas internacionales desde prisiones federales, estatales y locales.

### Los mejores Planes y Tarifas

Plan para familias y amigos con varios numeros por tan solo \$10.00/ mes .

Mas planes y numeros que ningun otro operador .

### No hay letra pequeña

**Lo Que Ves Es Lo Que Pagas**, NO hay ningun otro cargo extra.

Las llamadas internacionales solo se facturan cuando es aceptada por el familiar al otro lado del hilo telefonico.

**No hay contrato , permanencia ni ningun tipo de travas .**

El servicio siempre se ofrece en base a un mes de duracion pudiendo renovar el mismo todo los meses sin ningun cargo por la terminacion del servicio y lo puede solicitar con una simple llamada de telefono o con un correo electronico (E-MAIL)

**La solicitud se puede hacer rapida y muy facil .**

Nosotros siempre tenemos numeros y podemos procesar to registro inmediatamente en lines o por telefono.

**Detenidos civiles en carceles especiales y reclusos en camino a casas de medio camino le ofrecemos los siguientes servicios.**

\$0.40 de recarfo desde telefonos de prepago, la tarifa mas baja en el sector .

Buzon de Voz y la posibilidad de grabar las llamadas .





## Prison Legal News

*a publication of the  
Human Rights Defense Center*  
[www.humanrightsdefensecenter.org](http://www.humanrightsdefensecenter.org)

### EDITOR

Paul Wright

### MANAGING EDITOR

Alex Friedmann

### COLUMNISTS

Michael Cohen, Kent Russell,

Mumia Abu Jamal

### CONTRIBUTING WRITERS

Mike Brodheim, Matthew Clarke,  
John Dannenberg, Derek Gilna,  
Gary Hunter, David Reutter, Mike Rigby,  
Brandon Sample, Mark Wilson,  
Joe Watson, Christopher Zoukis

### RESEARCH ASSOCIATE

Mari Garcia

### ADVERTISING DIRECTOR

Susan Schwartzkopf

### LAYOUT

Lansing Scott

### HRDC LITIGATION PROJECT

Lance Weber—General Counsel

Robert Jack—Staff Attorney

**PLN is a monthly publication.**

A one year subscription is \$30 for prisoners, \$35 for individuals, and \$90 for lawyers and institutions. Prisoner donations of less than \$30 will be pro-rated at \$3.00/issue. Do not send less than \$18.00 at a time. All foreign subscriptions are \$100 sent via airmail. PLN accepts Visa and Mastercard orders by phone. New subscribers please allow four to six weeks for the delivery of your first issue. Confirmation of receipt of donations cannot be made without an SASE. PLN is a section 501 (c)(3) non-profit organization. Donations are tax deductible. Send contributions to:

**Prison Legal News**

**PO Box 1151**

**Lake Worth, FL 33460**

**561-360-2523**

**[info@prisonlegalnews.org](mailto:info@prisonlegalnews.org)**

**[www.prisonlegalnews.org](http://www.prisonlegalnews.org)**

PLN reports on legal cases and news stories related to prisoner rights and prison conditions of confinement. PLN welcomes all news clippings, legal summaries and leads on people to contact related to those issues.

Article submissions should be sent to - The Editor - at the above address. We cannot return submissions without an SASE. Check our website or send an SASE for writer guidelines.

Advertising offers are void where prohibited by law and constitutional detention facility rules.

PLN is indexed by the *Alternative Press Index*, *Criminal Justice Periodicals Index* and the *Department of Justice Index*.

## Georgia Prison Reforms (cont.)

there are incentives to minimize the amount of reported contraband.

HSP was declared the GDOC's new "flagship" facility following a June 2011 training session involving Georgia and Tennessee prison officials (former GDOC assistant commissioner Derrick D. Schofield currently serves as the commissioner of Tennessee's prison system). To demonstrate how securely Georgia prisons are run, dozens of guards in body armor swept through HSP in a mass shakedown looking for contraband. Only nine weapons were found during the search of the 1,683-bed facility.

Hays State Prison was named the GDOC's 2011 facility of the year, and the June 2011 shakedown was cited as a factor in HSP receiving that top honor. Guards, however, said the mass search for contraband was a sham.

According to several guards, the night before the shakedown they were ordered by supervisors to go cell to cell, warning prisoners of the upcoming search for weapons and illicit phones. Prisoners were told they would be rewarded with pizza and fried chicken the next day if no contraband was found.

Caleb McGill, manager of a local Little Caesars restaurant, said he received an order for about 400 pizzas to be delivered to HSP the following day; it was the largest order his store had ever received. Soon afterwards, buckets of fried chicken showed up at the facility, too.

"We get pizza if we have a good shakedown," retired Lt. Greg Hall recalled a jubilant prisoner saying. He added, "I spent every day of my life fighting them [prisoners], and then I'm going to give them pizza for being good?"

That was not the first time prisoners at HSP had been forewarned about an impending search. One former guard said prisoners were notified over the facility's loudspeakers in 2010, while others claimed they were told to inform prisoners twice in 2012 and once in 2011.

"[W]arning inmates of upcoming shakedowns places officers' lives in grave danger," said a 20-year veteran guard.

In the spring and summer of 2012, prisoners were told to slide their weapons under the cell doors and guards would col-

lect them, one veteran officer said. Another guard identified HSP Deputy Warden Shay Hatcher as the prison official who gave the order to notify prisoners about searches for contraband.

"That's someone more interested in their job than safety," noted Helen Eigenberg, a criminal justice professor at the University of Tennessee at Chattanooga. "If there's one thing taken seriously in prison, it's weapons."

## Staff Shortages and Contraband

HAYS STATE PRISON CAME UNDER INTENSE scrutiny when the news media began questioning prison officials after four prisoners were murdered in less than two months. Derrick Stubbs, 25, was beaten to death at HSP on December 19, 2012; Damion MacClain, 27, was beaten and strangled a week later; 31-year-old Nathaniel Reynolds was murdered on January 18, 2013; and HSP prisoner Pippa Hall-Jackson, 19, was stabbed to death after being transferred to another facility on February 5, 2013. Stubbs and MacClain were in protective custody at the time they were killed.

"It shouldn't have to take a total of four murders for people to say: 'What's going on? Something ain't right in this prison,'" remarked Ken Hall, Hall-Jackson's uncle.

Contraband weapons were clearly an issue with respect to some of the killings, but a shortage of prison staff also was a contributing factor.

GDOC guards were resigning or being fired at a high rate in 2012; more than one-third left their jobs that year. Although HSP is supposed to have 293 guards, 105 quit and 13 were fired during 2012.

"What made me [quit] was seeing the downhill spiral," said one former guard. "When you're seeing things get worse every day, not only seeing nothing done about it but blatantly people telling you to shut up, that's downhill. It's not going to get any better until it gets worse."

By February 2013, HSP's staff shortage reached a peak of 17 percent. On average, the facility had a shortage of 14 percent; staff shortages at other Georgia prisons ran as high as 30 percent. At Telfair State Prison, the shortage of guards ranged from 15 to 20 percent over a three-month period in 2012 when two prisoners and guard Larry Stell were murdered.

To deal with the dearth of staff, Georgia's prison system resorted to overtime:

## Georgia Prison Reforms (cont.)

The GDOC spent \$1.1 million in overtime at Telfair alone in 2012. Normally, guards work 170 hours in a 16-day period, but some had 260 hours on their time sheets and were working more than 16 hours a day. Prison officials approved \$300,000 in overtime at HSP from April 2012 to January 2013, which meant guards were working more hours and longer shifts.

"People are exhausted, and you don't make the best decisions when you're tired like that," said an HSP guard. "It's unbear-

able for a lot of folks."

"When you start making budget cuts, you see staffing issues in every department," noted state Rep. Jay Neal. "[The GDOC] works hard to make sure they have adequate staff."

Indeed, a sign posted outside Hays State Prison read: "Hiring Correctional Officers. Entry level \$26,754." That was \$2,000 more than the GDOC advertised on its website.

Yet people are not flocking to seek employment at HSP despite jobs being scarce in the area, with an unemployment rate of 10.4 percent. As one local blogger wrote, "You, too, can get stabbed with a piece of broken window frame for only 26k a year."

Regular GDOC guards do not carry weapons or flashlights. They have only a set of keys, a radio and a pen. "They have a job that most police officers on the streets wouldn't have," said Joe Stiles, director of the Georgia Police Benevolent Association. He called for a pay raise for prison guards.

To deal with violence and contraband problems at HSP, prison officials sent tactical squads to the facility. Each squad of 12 guards is specially trained and equipped with body armor and riot shields. Their duties included shaking down the prison.

In January 2013, the squads confiscated 192 weapons and 137 cell phones at HSP; they found as many as 25 weapons in a unit housing 62 prisoners. By comparison, 537 weapons and 235 phones were discovered at the facility in all of 2012.

Over 5,000 cell phones and 11,000 weapons were found at the GDOC's 12 high-security prisons in 2012. Smith

State Prison had the most contraband that year, with 866 cell phones and 2,248 weapons seized. In May 2012 alone, guards recovered 101 cell phones thrown over the facility's perimeter fence; that same month, seven visitors were arrested for attempting to smuggle in contraband.

"It's not a mystery what [prison officials] should be doing," said Professor Eigenberg. "When you see spikes in assaults, high levels of contraband, lots of [guard] turnover, those are serious signs of a serious problem."

### Faulty Locks and a Lawsuit


CONTRABAND AND STAFF SHORTAGES WERE only some of the issues at Hays State Prison. A 2011 state audit found that locks in prisoner housing units at the facility "could be easily defeated," yet in spite of that warning no action was taken – with fatal results.

Faulty cell door locks contributed to the December 26, 2012 murder of HSP prisoner Damion MacClain, who was beaten and strangled in his cell at night when the doors should have been secured.

"[MacClain's family] should sue the prison," said Daniel Vazquez, a former California prison administrator. "I've worked in corrections all my adult life. I've had officers killed by inmates, inmates killed by other inmates, [but] I have never experienced that."

An electrical engineer and contractor wrote to HSP's engineer in 2010, advising that it would cost about \$1,750 to fix the cell doors in each of the prison's 10 units with lock problems, or less than \$20,000 total. In the wake of MacClain's murder, GDOC officials promised a "floor to ceiling" review of HSP.

A February 13, 2013 purchase order




**PASS**  
Prisoner Assistance  
Scholastic Service  
provides educational  
materials nationally to  
prisoners in state and  
federal prisons and jails.

- ◆ Victim Awareness
- ◆ Anger Management
- ◆ Addiction/Substance Abuse
- ◆ Domestic Violence
- ◆ Gang Diversion
- ◆ Conflict Resolution
- ◆ Parenting
- ◆ Non-violent Communication
- ◆ Re-entry in Society
- ◆ Living With Purpose

Prisoners who successfully complete the PASS program earn a degree in Personal Psychological Development which can be used as evidence of rehabilitation before parole boards and with prison officials.

10 COURSES  
2 SEMESTERS



\$500 for the entire course of study and degree.

Graded study - completed through the mail.

**1-888-670-7277**

**FOR MORE INFO**  
[www.passprogram.org](http://www.passprogram.org)  
[pass@passprogram.org](mailto:pass@passprogram.org)

PASS Program, PO BOX 2009, San Francisco, CA, 94126

### 2012 Fourth Edition

#### "WINNING HABEAS CORPUS & POST CONVICTION RELIEF", over 620 pages

Cases cited through 638 F.3d. Simply the best book for prisoners who are researching post conviction relief and Ineffective Assistance of Counsel. Habeas Hints, writer & Attorney, **Kent Russell** writes: *Now that I've been turned on to 'Winning Habeas Corpus', I always make sure that it's close at hand.*

- A virtual law library in a single book, actual case quotes.
- Habeas Procedures & Prac. § 2254, 2255 & Rule 60(b).
- Sixth Amendment & IAC, pretrial duty to investigate.
- Recognized defenses, plea bargain process.
- Jury Instructions, sentencing, time bar, & tolling.
- Over 1500 cases cited; 7" x 10" size & 10 pt. font.

**Price for Prisoners only \$58.50**

Send money order or institutional check to:

**Fast Law Publishing Associates**  
P.O. Box 577, Upland, CA 91785  
On-Line Orders: [www.fastlaw.org](http://www.fastlaw.org)

## Alexander Byrd Optics

### Single Vision Transitions eyeglasses

**\$119.95 + S&H**

with Lifetime Frame Warranty

To receive order form and details write to:

2150 Wise St. #4769  
Charlottesville, VA 22905

or have someone go to:

[abyrdoptics@gmail.com](mailto:abyrdoptics@gmail.com)  
[www.abyrdoptics.com](http://www.abyrdoptics.com)

to spend \$1 million at HSP stated in part, "Hays State Prison has had recurring problems with the cell door locks in its housing units. This situation has severe security implications in that breaches of the locks have resulted in attacks on inmates and staff." Prison officials also paid \$700,000 for a touchscreen locking control system.

Porcelain toilets – which can be broken to create weapons – were replaced with steel versions at HSP. Light switches and air vents were covered to prevent them from being made into improvised shanks. The GDOC also purchased stabproof vests for guards and transferred hundreds of prisoners from HSP to other facilities.

After the Board of Corrections approved a \$6.9 million bond issue for statewide prison security improvements in May 2013, the GDOC again presented HSP as a flagship facility, citing lower levels of violence.

"I look forward to Hays being a model for the other similar prisons," said GDOC Board Chairman John Mayes.

"I don't know if there is a perfect system," state Sen. Chuck Hufstetler observed. "But so far they've put their worst prison-

ers in the newly renovated facility and had no damage to the locks or the beds to the heating system."

Not everyone was satisfied with the belated security improvements, though. Damion MacClain's mother, RaHonda, filed a wrongful death suit in September 2013, claiming prison staff failed to protect her son, who had said he was being targeted by other prisoners because he refused to join a gang. She is represented by the Southern Center for Human Rights.

"Ms. MacClain seeks to hold accountable those state officials who so little valued her son's life that they ignored obvious signs that he and others at Hays were in danger," said SCHR attorney Sarah Geraghty.

The state has filed a motion to dismiss the case, which remains pending. See: *MacClain v. Owens*, U.S.D.C. (N.D. Ga.), Case No. 4:13-cv-00210-HLM.

### Job Security vs. Prison Security

ONE WOULD THINK THAT THE MULTIPLE murders, contraband problems and security deficiencies at Hays State Prison would be detrimental to the careers of the officials in charge of the facility. However, that evi-

dently is not how things work in Georgia's prison system.

HSP warden Clay Tatum was removed from his position on February 6, 2013, the day after Pippa Hall-Jackson was murdered by another Hays prisoner after being transferred to GDCP. Tatum, who was replaced at HSP by Warden Scott Crickmar, was not fired but rather reassigned to Montgomery State Prison – a medium-security facility; he was later transferred to Rogers State Prison. Wardens at 13 other GDOC facilities were shifted to different prisons in June 2013.

HSP Unit Manager Timothy Clark was promoted to chief of security for mobile construction for the entire state, while Deputy Warden Shay Hatcher, who was responsible for security at HSP, was promoted to warden at Rutledge State Prison effective July 1, 2013.

That Hatcher remained in a high-ranking position did not sit well with some prison staff, who blamed him for contributing to violence at HSP by notifying prisoners of shakedowns. "I think it's appalling," said one guard. Both Hatcher and Clark, who are named as defendants in

### ~ THE SENZA COLLECTION ~

SENZA SPECIALIZES IN PROVIDING YOU SEVERAL CHOICES  
ALL NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY – OR – NON NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY  
WE HAVE DIVIDED OUR CATALOGS INTO THESE CATEGORIES:

#### CAUCASIN/AFRICAN-AMERICAN/HISPANIC/ASIAN/MIXED HOTTIES

EACH PAGE OF OUR CATALOGS HAS 99 GLORIOUSLY SEDUCTIVE LADIES POSING JUST FOR YOUR ENJOYMENT.

OVER 250 CATALOGS TO COLLECT AT JUST \$2.50 PER CATALOG

HERE'S A LITTLE FREEBIE FROM SENZA TO YOU!!!

ORDER YOUR FREE SENZA "99 HOTTIES" SAMPLE CATALOG  
JUST SEND US A SELF ADDRESSED STAMPED ENVELOPE TO:

**SENZA**

FREE CATALOG OFFER  
P.O. BOX 5840

BALTIMORE, MD 21282

**AND FOR THOSE THAT JUST CANNOT WAIT...TAKE ADVANTAGE OF THIS LIMITED TIME OFFER**

#### SENZA'S INTRODUCTORY SPECIAL \*\*\*DIRTY DOZEN\*\*\*

\$19.99 GETS YOU ALL THIS + FREE SHIPPING AND HANDLING

12 EYE POPPING CATALOGS! EACH CATALOG HAS 99 PICS TO CHOOSE FROM ON EACH PAGE

PLUS

12 4X6 PRINTS FROM OUR MIXED HOTTIES SELECTION TO SHOW OFF SENZA'S 4X6'S PRINT QUALITY.

**ALL FOR JUST \$19.99**

**REMEMBER YOU MUST: SPECIFY NUDE OR NON-NUDE ON YOUR ORDER**

**SPECIFY YOUR INSTITUTIONS RESTRICTIONS AS TO THE NUMBER OF PRINTS ALLOWED IN ONE ENVELOPE.**

**SENZA CORPORATE POLICIES – PLEASE REVIEW THEM CAREFULLY**

**ALL SENZA COLLECTION IMAGES ARE SOLD AT A FLAT PRICE OF 0.35 CENTS EACH.**

ANYONE WISHING TO PURCHASE 1000 + PRINTS AT ONE TIME WILL BE GIVEN A FLAT PRICE OF 0.30 CENTS PER IMAGE.

**SENZA HAS A MINIMUM ORDER REQUIREMENT OF: \$15.00 THIS DOESN'T INCLUDE S&H CHARGES.**

**SHIPPING AND HANDLING CHARGES ARE AS FOLLOWS:**

**1 – 5 4x6 PRINTS – \$1.00 PER ENVELOPE / 6 – 15 4x6 PRINTS – \$1.50 PER ENVELOPE / 16 – 25 4x6 PRINTS – \$2.00 PER ENVELOPE**

YOU MUST NOTIFY SENZA ON THE ORDER FORM, THE MAXIMUM NUMBER OF PRINTS YOUR INSTITUTION WILL PERMIT IN EACH ENVELOPE

**SENZA WILL ACCEPT U.S. FIRST CLASS POSTAGE STAMPS AT THE RATE OF \$5.00 FOR EACH BRAND NEW FLAT BOOK OF 20 STAMPS.**

YOU ARE REQUIRED TO KNOW YOUR INSTITUTIONS POLICIES REGARDING WHAT IMAGES ARE ACCEPTABLE INTO YOUR FACILITY INSTITUTION. THERE ARE NO EXCEPTIONS TO THIS POLICY. RETURNED/REJECTED MAIL – YOU WILL HAVE 15 BUSINESS DAYS TO SEND US A SASE WITH A STREET ADDRESS IN WHICH TO MAIL YOUR RETURNED/REJECTED PRINTS.

AFTER 15 DAYS THE PRINTS ARE RETURNED TO OUR INVENTORY.

ALL SALES ARE FINAL/NO REFUNDS OR EXCHANGES

## Georgia Prison Reforms (cont.)

RaHonda MacClain's wrongful death suit, have a history of misconduct.

Hatcher's record indicates that he was fired in 2000 for sexual harassment, for ordering a prisoner to simulate oral sex with another prisoner and lying to investigators. Four months later he was reinstated, and worked his way up through the ranks.

Clark was involved in an August 12, 2010 incident that began after prisoners attacked several guards. Then a captain, Clark ordered a tactical squad into the unit, shouting, "Give them something they can send pictures to their mommas." Four prisoners suffered retaliatory beatings by members of the tactical squad; they were reportedly punched, stomped, kicked and hit with batons and a flashlight while handcuffed. The prisoners, represented by the Southern Center for Human Rights, filed suit in federal court claiming excessive use of force; the case settled in February 2012 for \$93,000. [See: *PLN*, Sept. 2012, p.24].

According to the Georgia Bureau of Investigation, the nine prisoners murdered

in GDOC facilities in 2012 were either gang-affiliated or victims of gang violence. Battling gangs has become harder, according to state officials.

"They used to be able to break up gangs from one prison to another, [but] when you have them communicating through cell phones, it's more and more difficult," said state Rep. Jay Neal.

Atlanta attorney McNeill Stokes has sued the GDOC at least 100 times over the past decade. He said most of the calls he receives from prisoners' family members are about gang-related extortion, assaults and murders. "There are ways to control gang violence," he stated, but prison officials are "just not doing it."

In May 2011, the Eleventh Circuit Court of Appeals reversed the dismissal of one of Stokes' lawsuits involving the 2006 gang-related killing of prisoner John C. Bradford and an assault on another prisoner, Troy P. Crumbley, at Calhoun State Prison (CSP). The appellate court wrote that there were "hundreds" of weapons in the prison, and almost every inmate in Bradford's dormitory owned or had access to a shank; prison officials refused to disci-

pline inmates for possessing weapons; and gangs, which operated in every dormitory, were extremely violent, stealing, robbing, and committing acts of violence against white inmates in particular. There is also evidence that officials encouraged inmates to obtain weapons for protection, due to the dangerous conditions at CSP."

In reversing the district court's order of dismissal, the Court of Appeals stated: "Our decisions clearly establish that this evidence, at the very least, is sufficient to create a jury question on whether a substantial risk of serious harm existed at CSP." The case was remanded and remains pending, with the district court granting in part and denying in part the defendants' motion for summary judgment on September 30, 2013. See: *Bugge v. Roberts*, 430 Fed.Appx. 753 (11th Cir. 2011).

## Little Accountability

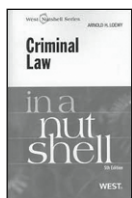
APPARENTLY PRISONERS, NOT GDOC officials, are the only ones being held accountable for the violence and murders in Georgia's prison system. In November 2013, HSP prisoner Devann Michael Anderson, 27, received a 20-year sentence for stabbing Pippa Hall-Jackson to death. Ricardo Beltran-Gonzales, 39, and Leonardo Ramos Rodriques, 36, face murder charges for killing Nathaniel Reynolds at HSP. And Daniel Ferguson has been charged with murdering fellow HSP prisoner Damion MacClain.

Meanwhile, the problems at Hays State Prison continue, including a prolonged limited lockdown, staff shortages – which averaged 17.5 percent from July to November 2013 – and the December 11, 2013 death of prisoner Phillip Pearson, 42. Although the Georgia Bureau of Investigation stated his death may have been a suicide, Pearson's father, Charlie, said his son told him he was in fear of his life, and when he saw his son's body there were bruises on his face. An investigation into Pearson's death remains open.

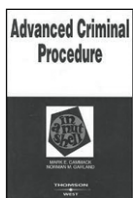
"The prison won't give us no information," Charlie Pearson stated. "Whatever it is, they need to put a stop to [the violence]. They are somebody's kids. To me that prison needs to be closed down."

Sources: [www.timesfreepress.com](http://www.timesfreepress.com), [www.odmp.org](http://www.odmp.org), [www.courthousenews.com](http://www.courthousenews.com), <http://coosavalleynews.com>, [www.jacksonprogress-argus.com](http://www.jacksonprogress-argus.com), *Atlanta Journal-Constitution*, [www.dcor.state.ga.us](http://www.dcor.state.ga.us)

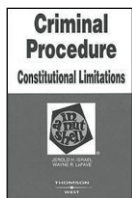
## New Titles Available in PLN's Bookstore



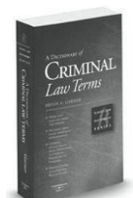
**Criminal Law in a Nutshell**, by Arnold H. Loewy, 5th edition, 387 pages. **\$43.95**



**Advanced Criminal Procedure in a Nutshell**, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **\$43.95**



**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFave, 7th edition, 603 pages. **\$43.95**



**A Dictionary of Criminal Law Terms (Black's Law Dictionary® Series)**, by Bryan A. Garner, 768 pages. **\$33.95**

☐ Criminal Law in a Nutshell ☐ Advanced Criminal Procedures in a Nutshell ☐ Criminal Procedure  
☐ Dictionary of Criminal Law Terms

Amount enclosed (add \$6 S&H for orders under \$50; free shipping over \$50) \_\_\_\_\_

By ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**PRISON LEGAL NEWS**

PO Box 1151 • Lake Worth, FL 33460  
Tel [561] 360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)



# WELCOME TO KRASNIA BABES & KRASNIA STUDS WORLD

**TENS OF THOUSANDS OF THE HOTTEST AND MOST SCANDALOUS BABES&DUDES FOUND ON THE PLANET.  
EACH CATALOG PAGE HAS 120 BEAUTIFUL GIRLS OR BOYS POSING JUST FOR YOU!  
ORDER ONE CATALOG PAGE FOR ONLY \$4.50 OR FOR 10 U.S. FOREVER STAMPS WITH AN SASE ENCLOSED.  
WE WILL SEND YOU VOLUME ONE. EACH ADDITIONAL VOLUME THE SAME PRICE!**

## HELP US TO HELP YOU!

**WE ARE MORE THAN HAPPY TO ANSWER E-MAIL INQUIRES HOWEVER, DUE TO MAILING COST AT \$0.46 CENTS  
A LETTER, PLEASE ENCLOSE AN SASE WITH YOUR QUESTIONS, OTHERWISE NO REPLIES!**

## WHAT ABOUT OUR PRICES AND POLICIES

**COLOR PRINTS ON 4x6 GLOSSY PHOTO PAPER AS LOW AS \$0.35 CENTS PER PRINT ON ORDERS OVER 500  
SHIPPED ACCORDING TO POLICY: 25 PICTURES PER ENVELOPE EVERY 24 HOURS. S&H \$2.00 PER ENVELOPE.**

## METHOD OF PAYMENT/CONTACT INFORMATION

**U.S. POSTAL SERVICE MONEY ORDERS-STATE & FEDERAL CORRECTIONAL INSTITUTIONAL CHECKS**

**PAYABLE ONLY TO: KRASNIA L.L.C.**

**EQUATION FOR FIRST CLASS U.S. FOREVER STAMPS**

**BRAND NEW FLAT BOOK FOR ALL ORDERS AT THE RATE OF \$6.00 PER FLAT BOOK.**

**WE RESPOND TO OUR CLIENTS NEEDS AND TRY TO HELP THE BEST WE CAN.**

**OUR SEASONAL SPECIALS MEAN A KICKOFF OF SAVINGS!**

### COLOR CATALOG DISCOUNT SALE ONE COLOR CATALOG OF 120 BABES IN CLASSIC OR NUDE LINES \$4.50

**PLEASE INCLUDE  
A SELF-ADDRESSED STAMPED  
(2-FIRST CLASS STAMPS) ENVELOPE.  
QUANTITY BUYS:**

5-14 CATALOGS =10% OFF OUR REGULAR PRICE  
15 CATALOGS =15% OFF OUR REGULAR PRICE  
20 CATALOGS =20% OFF OUR REGULAR PRICE  
25 CATALOGS =25% OFF OUR REGULAR PRICE  
30 CATALOGS =30% OFF OUR REGULAR PRICE  
35 CATALOGS =35% OFF OUR REGULAR PRICE  
40 CATALOGS =40% OFF OUR REGULAR PRICE  
45 CATALOGS =45% OFF OUR REGULAR PRICE  
50 CATALOGS =50% OFF OUR REGULAR PRICE  
BE SURE TO SPECIFY CLASSIC OR NUDE BABES!

150 VOL. OF KRASNIA BABES CLASSIC LINE  
150 VOLUMES OF KRASNIA BABES NUDE LINE

**\$24.95 S&H FREE  
FOR GRAB BAG OF  
50 PHOTOS  
FROM ALL OUR CATALOGS  
SPECIFY RACE AND MAIN  
AREA OF YOUR INTERESTS  
WE WILL PICK SELECTION  
FOR YOU  
BONUS 1 COLOR CATALOG  
PAGE OF 120 BABES**

### LOOSE STAMPS FOR LOOSE BABES

KRASNIA LOOSE STAMP GRAB BAG SPECIAL  
10 LOOSE BABES.....30 STAMPS  
25 LOOSE BABES.....75 STAMPS  
50 LOOSE BABES.....150 STAMPS  
ALL STAMPS MUST BE 1ST CLASS STAMPS  
IN LIKE NEW CONDITION!  
SPECIFY NUDE OR BOP-SAFE (NO VISIBLE NUDITY)  
WE WILL PICK SELECTION FOR YOU

**KRASNIA BABES HAS SPRUNG SALE!  
FREE SAMPLE CATALOG FROM KRASNIA!  
120 BABES IN EACH CATALOG  
ENCLOSE ONE SASE WITH TWO FIRST  
CLASS STAMPS! 1 CAT PER CUSTOMER  
PLEASE SPECIFY MALE OR FEMALE BABES  
NUDE OR BOP-FRIENDLY**

**3 BRAND NEW FLAT BOOKS OF FOREVER  
STAMPS FOR GRAB BAG OF 45 PHOTOS  
FROM ALL OUR CATALOGS. SPECIFY RACE  
AND MAIN AREA OF YOUR INTERESTS  
WE WILL PICK SELECTION FOR YOU  
BONUS 1 COLOR CATALOG OF 120 BABES  
PLEASE INCLUDE 6 FOREVER STAMPS  
WITH YOUR ORDER FOR S&H**

**KRASNIA L.L.C.  
P.O. BOX 32082  
BALTIMORE, MD 21282  
EMAIL AND CORRLINKS REQUESTS ACCEPTED AT:  
KRASNABABES@HOTMAIL.COM**

**WE'D LIKE TO START THE HOLIDAYS RIGHT THIS YEAR!  
THE WAY TO DO THAT IS BY SENDING YOU INCREDIBLE VALUES  
IT'S ONE THING TO TALK THE TALK, ANOTHER TO WALK THE TALK**

**50 GREAT BABES 0.50 CENTS EACH!—\$25.00  
100 GREAT BABES 0.45 CENTS EACH!—\$45.00  
200 GREAT BABES 0.40 CENTS EACH!—\$80.00  
300 GREAT BABES 0.40 CENTS EACH!—\$120.00  
500 GREAT BABES 0.35 CENTS EACH!—\$175.00**

**STANDARD TERMS & CONDITIONS APPLY – \$2.00  
PER ENVELOPE (25 PHOTO) FOR SHIPPING AND HANDLING!**

**WAIT!  
YOU SAY YOU DON'T HAVE ENOUGH BABE CHOICES  
OR CATALOGS? YOU NEED CATALOGS?  
PREPAY YOUR ORDER AND WE WILL SEND YOU  
FREE COLOR CATALOGS!  
GREAT DEAL, BUT HOW MANY CATALOGS?**

**FOR EVERY 100 BABES WE'LL SEND YOU  
240 BABES TO CHOOSE FROM!**

### ORDER

50 BABES.....ONE SINGLE CATALOG  
100 BABES.....ONE DOUBLE CATALOG  
200 BABES.....TWO DOUBLE CATALOGS  
300 BABES.....THREE DOUBLE CATALOGS  
500 BABES.....FIVE DOUBLE CATALOGS

**KRASNIA IS PROUD TO INTRODUCE AT FANTASTIC INTRODUCTORY PRICES  
THE CONNOISSEUR'S COUTURE "CACHE TWO-FIVE COLLECTION"  
OF INTERNATIONAL ADULT FILM STARS  
TWELVE PACKAGES OF 25 NUDE AND NON-NUDE POSES,  
AVAILABLE ONLY IN OUR "CACHE TWO-FIVE" COLLECTION.**

### "CACHE TWO-FIVE"

"CACHE TWO-FIVE" IS AVAILABLE IN TWELVE (12) SPECIALLY PRICED PACKAGES  
OF 25 POSES IN NUDE AND NON-NUDE POSES.

PLEASE SPECIFY ON YOUR ORDERS IF YOU WANT NUDE OR NON-NUDE PACKAGES  
AND WHAT COLLECTION NUMBER YOU'D LIKE.

COLLECTIONS ARE NUMBERED 01-12 FOR EXAMPLE ON YOUR ORDER YOU'D WRITE:

\*\*\*NUDE CACHE TWO-FIVE PACKAGE 01 & 02\*\*\*

REMEMBER THERE ARE TWELVE (12) COMPLETELY DIFFERENT PACKAGES OF 25 BABES,  
THERE ARE NO DUPLICATES IN ANY OF THE 12 PACKAGES.

600 BEGUILING BEAUTIES, ALL BRAND NEW ADDITIONS TO OUR LINE AND AVAILABLE ONLY  
IN OUR CACHE "TWO-FIVE" PACKAGES! 300 NUDES AND 300 NON-NUDE BEAUTIES  
CAPTURE YOUR OWN COLLECTION OF KRASNIA'S "CACHE TWO-FIVE" SELECTIONS IN  
INDIVIDUALIZED PACKAGING OF 25 RARE AND EXQUISITE BREATH-TAKING BEAUTIES.  
THE CONNOISSEUR'S COUTURE COLLECTION OF "CACHE TWO-FIVE" BRINGS YOU  
25 BEAUTIES IN EACH "CACHE TWO-FIVE" PACKAGE FOR ONLY \$12.95 PER PACKAGE

**LIMITED TIME SPECIAL \*\*\*\*\* \$59.95\*\*\*\*\***

PLUS S&H FOR 6 "CACHE TWO-FIVE" PACKAGES OF THE NUDE OR NON-NUDE COLLECTIONS  
150 BEAUTIES

IMAGINE 150 OF THESE EXCITING AND EXQUISITE BEAUTIES  
FOR A RIDICULOUSLY LOW PRICE OF

\*\*\*\*\*\$59.95\*\*\*\*\* PLUS \$12.00 SHIPPING AND HANDLING CHARGE.

ADD \$2.00 FOR SHIPPING AND HANDLING PER "CACHE TWO-FIVE" PACKAGE ORDERED.

YOU MUST SPECIFY NUDE OR NON-NUDE PACKAGES

IF NOT SPECIFIED NON-NUDE WILL BE SHIPPED AUTOMATICALLY

ALL OF OUR NORMAL POLICIES APPLY

**FOR KRASNIA CLIENTS WHO WORK THE YARDS;  
HAVE WE GOT A GREAT OPPORTUNITY FOR YOU...GRAB BAG  
MR. HUSTLE GRAB BAG BARGAIN DAYS**

**ONLY \$0.25 CENTS PER BABE**

**5 GRAB BAG MINIMUM PURCHASE REQUIRED  
\$2.00 SHIPPING AND HANDLING PER BAG**

**25 AWESOME BABES PER BAG AT ONLY \$6.25 PER BAG  
YOU MUST BUY AT LEAST 5 GRAB BAGS OR 50 GRAB BAGS.  
THIS\*\*\*GRAB BAG BARGAIN\*\*\* IS NOT GOING TO BE OFFERED  
AGAIN THIS YEAR. *SO STOCK UP NOW!***

**AS YOU KNOW YOU GET AN ARRAY OF 25 GORGEOUS BABES  
YOU CAN ONLY CHOOSE EITHER MALES OR FEMALES,  
ALL NUDES OR BOP SAFE...THE INDIVIDUAL SELECTIONS COME  
FROM OUR BEST CATALOGS!!!**

**YOU MAY WANT TO SIT DOWN FOR THIS BONUS BARGAIN!  
OUR BABES CATALOGS SPECIAL OF THE DECADE**

— 5 COLOR CATALOGS FOR \$6.00 —  
— 10 COLOR CATALOGS FOR \$12.00 —  
— 15 COLOR CATALOGS FOR \$18.00 —  
— 20 COLOR CATALOGS FOR \$24.00 —

**OUR CATALOGS SPECIAL AVAILABLE WHEN YOU PURCHASE  
THE 5 GRAB BAG MINIMUM!**

**THIS PRICE INCLUDES FREE SHIPPING ON THE CATALOGS  
BECAUSE OF SHIPPING TERMS ALL CATALOGS SOLD IN  
MULTIPLES OF 5 FOR \$6.00 ONLY.**

**YOU CHOOSE EITHER MALE OR FEMALE CATALOGS  
AND IF YOU WANT NUDE OR BOP SAFE!!**

# From the Editor

by Paul Wright

IN 2011, THE HUMAN RIGHTS DEFENSE Center – the parent organization of *Prison Legal News* – co-founded the national Campaign for Prison Phone Justice to eliminate the high costs of prison phone calls. We had success before the Federal Communications Commission, which voted in August 2013 to cap the cost of interstate (long distance) prison and jail phone calls. We are now asking the FCC to regulate and cap the cost of intrastate (in-state) calls as well, which constitute around 85% of phone calls made by prisoners.

In January 2014, HRDC launched the Washington Prison Phone Justice Campaign (WA PPJ) to end the excessive costs of prison and jail phone calls for Washington prisoners. This is a statewide campaign aimed specifically at Washington state prisons, county jails and the immigration detention center in Tacoma, which seeks to eliminate “commission” kickbacks paid to those facilities to secure monopoly contracts for phone services. We have reopened our Seattle, Washington office for this purpose and the WA PPJ campaign will be led by Carrie Wilkinson. Before joining HRDC, Carrie was a senior litigation paralegal at the Seattle law firm of McDonald, Hogue and Bayless, which represented HRDC and *PLN* in numerous censorship suits in the Pacific Northwest.

*PLN* subscribers in Washington have already received an initial mailing from the WA PPJ, and will receive more as the campaign proceeds. We have almost completed the task of gathering all the data for prison and jail phone contracts, rates and commission revenue in Washington state. We need to hear from Washington prisoners and those who accept their phone calls concerning the negative impacts of high prison phone rates. People with Internet access can visit [www.wappj.org](http://www.wappj.org) to upload videos or post comments, or voice messages can be recorded at 1-877-410-4863. If you are a Washington prisoner, please tell your friends and family members about the WA PPJ and how they can get involved. We want to receive personal stories about prison and jail phone rates in Washington state – see the full-page WA PPJ ad in this issue of *PLN* for more information.

We are excited about launching the Washington Prison Phone Justice Campaign as our first statewide campaign to end the practice of price-gouging prisoners and their families, which has gone on far too long. We would also like to welcome Carrie on board as HRDC’s newest staff member. She will be working closely with David Ganim, our national Prison Phone Justice Director, as well as other HRDC

staff on the issue of reducing prison and jail phone rates in Washington state.

As longtime readers of *PLN* know, the only thing I dislike about being editor is noting the passing of our friends and allies. Over the past 23 years this has been the worst part of publishing *PLN*. On January 1, 2014, Marc Blackman, our longtime attorney in Portland, Oregon, died from complications of kidney cancer. Marc was one of the best criminal defense attorneys in the state and had an abiding passion for fairness and justice.

I first got to know Marc in 1999 when the Oregon DOC was banning *PLN* due to the type of postage rate we used to mail the magazine. Marc agreed to co-counsel the case with Alison Hardy and we filed *PLN v. Cook*, which we ultimately won, enjoining the Oregon DOC from censoring *PLN* based on our postage rates. The DOC attempted to ignore the injunctions in that case and Marc co-counseled with attorney Michael Gendler when we filed another suit, *PLN v. Schumacher*, to ensure compliance with the prior injunctions. Marc also provided wise and able co-counsel in our recent censorship suits against the Columbia and Umatilla County jails in Oregon, which succeeded in ending jail postcard policies throughout that state.

In February 2013, *PLN v. Columbia County* went to trial in Portland, Oregon and I spent a lot of time with Marc both in and out of the courtroom, shortly before he was diagnosed with cancer. Marc was an exceptional attorney and over the many years he represented *PLN* his counsel and tenacious representation was valued and helped lead us to victory in every case. Unlike many successful trial lawyers, Marc did not have a huge ego and was wonderful to work with. He will be sorely missed and both criminal defendants and prisoners in Oregon have lost a dedicated advocate and warrior for their rights. This issue of *PLN* is dedicated to Marc’s memory, and all the staff at HRDC send our condolences to his friends, family and the law firm of Ransom Blackman LLP.

Enjoy this issue of *PLN* and please encourage others to subscribe; by subscribing, you help support an independent prisoner media. 🐼



## Living in Infamy: Felon Disfranchisement and the History of American Citizenship

Pippa Holloway

*Living in Infamy* is an outstanding introduction to the complicated racial politics that birthed felon disfranchisement laws and ultimately relegated millions to second-class status in the United States. This meticulous, impeccable history is packed with fresh insights about how we, as a nation, managed to fall so far short of our democratic ideals.” --Michelle Alexander, author of *The New Jim Crow*

“This is a book that needed to be written. For the first time we now have a comprehensive and sophisticated historical analysis of the racial dynamics of felony

disenfranchisement as it evolved in the post-Civil War South. It’s not a pretty picture, but it helps us to understand how we came to a point where U.S. policies in this regard are far out of line with the rest of the democratic world.” --Marc Mauer, The Sentencing Project, author of *Race to Incarcerate*  
**code 23954 to get 20% off at [oup.com](http://oup.com)**

**Use promo**

# States Renewing Their Prison Phone Contracts

*As state DOCs renew or rebid their prison phone contracts, you can help urge them to eliminate commission kickbacks and lower intrastate phone rates.*

*The Campaign for Prison Phone Justice needs your help in*

**\*\*\*\*\* Minnesota, New Jersey and Pennsylvania! \*\*\*\*\***

The Departments of Corrections in the above states are in the process of re-bidding or renewing their prison phone contracts. Most DOCs receive a commission (kickback) on revenue generated from calls made by prisoners, which results in excessively high phone rates. Although the FCC voted in August 2013 to cap the rates of interstate (long distance) prison calls, the order has not gone into effect and does not apply to intrastate (in-state) calls; an estimated 85% of prison phone calls are in-state. This is an opportunity to ask the DOC to forgo commissions and ensure its new prison phone contract is based on the lowest cost to those who pay for the calls – mostly prisoners' families.

## **Take Action NOW! Here's What YOU Can Do!**

Ask your family members and friends to write, email, call and fax the DOC and the governor's office (addresses and contacts are listed below), requesting that the DOC: 1) forgo commission payments when re-bidding or renewing its prison phone contract, and 2) base the new contract on the lowest calling costs. Lower prison phone rates should apply not just to long distance calls but also to in-state calls. For a sample letter or to easily send an email, visit the Campaign for Prison Phone Justice's website and click on the "Take Action" tab:

**[www.phonejustice.org](http://www.phonejustice.org)**

### **Prison phone contract information & Contacts:**

**Minnesota:** Receives a 59% kickback; existing contract expires on 3-31-2014. Charges \$17.30 for a 15-minute collect interstate call, \$6.45 for intrastate and \$1.75 for a local call. **Contacts:** Minnesota DOC, Commissioner Tom Roy, 1450 Energy Park Drive, Suite 200, St. Paul, MN 55108; phone: 651-361-7226, fax: 651-642-0414, email: tom.roy@state.mn.us. Governor Mark Dayton, 130 State Capitol, St. Paul, MN 55155; phone: 612-296-3391, fax: 612-296-2089, email: mark.dayton@state.mn.us

**New Jersey:** Receives a 41% kickback; existing contract expires on 3-03-2014. Charges \$4.95 for a 15-minute collect interstate call, \$4.95 for intrastate and \$4.95 for a local call. **Contacts:** New Jersey DOC, Commissioner Gary Lanigan, P.O. Box 863, Trenton, NJ 08625; phone: 609-292-4036, fax: 609-292-9083, email: gary.lanigan@doc.state.nj.us. Governor Chris Christie, New Jersey State House, Trenton, NJ 08625; phone: 609-292-6000, fax: 609-292-5212, email: constituentrelations@gov.state.nj.us

**Pennsylvania:** Receives a 44.4% kickback; existing contract expires on 3-07-2014. Charges \$11.00 for a 15-minute collect interstate call, \$6.25 for intrastate and \$1.65 for a local call. **Contacts:** Penn. DOC, Secretary John Wetzel, 1920 Technology Parkway, Mechanicsburg, PA 17050; phone: 717-728-4037, fax: 717-728-4079, email: hjones@pa.gov. Governor Tom Corbett, 225 Main Capitol Bldg., Harrisburg, PA 17120; phone: 717-787-2500, fax: 717-783-4429, email: governor@state.pa.us

# Prison Phone Justice Campaign: Recent Developments

**P**LN's DECEMBER 2013 COVER STORY provided an updated look at the prison phone industry and examined a recent order by the Federal Communications Commission (FCC) that imposed rate caps on interstate (long distance) prison and jail phone calls. There have since been several new developments on the prison phone front.

As previously reported, the nation's two largest Inmate Calling Service (ICS) providers, Global Tel\*Link and Securus Technologies, filed legal challenges to the FCC's order in the D.C. Circuit Court of Appeals.

On January 13, 2014, the appellate court ruled on Securus' motion for a stay of the FCC's order, granting the motion in part and denying it in part. As a result, several key provisions of the order were placed on hold pending the outcome of Securus' lawsuit.

The interim rate caps imposed by the FCC – \$.25 per minute for collect interstate ICS calls and \$.21 per minute for debit and prepaid interstate ICS calls – were *not*

stayed and went into effect on February 11, 2014. As of that date, all correctional facilities nationwide were required to comply with the rate caps.

In addition to the rate caps for interstate prison phone calls, the D.C. Circuit also declined to stay a provision of the FCC's order related to a prohibition on billing-related call blocking.

However, three other provisions of the FCC's order were stayed by the Court of Appeals: Section 64.6010, which requires that ICS phone rates and ancillary fees be cost-based; Section 64.6020, which establishes safe harbor rates of \$.14 per minute for collect interstate calls and \$.12 per minute for debit and prepaid interstate calls; and Section 64.6060, which imposes annual reporting requirements on prison phone companies. The appellate court's stay of these provisions will remain in effect until it issues a ruling on the merits of Securus' challenge to the FCC's order.

Following the court's ruling, FCC Chairman Tom Wheeler, Commissioner Mignon Clyburn and Commissioner Jessica Rosenworcel issued a joint statement. "We are pleased that millions of families will finally see relief from outrageous rates for inmate calling services when the interim rate caps ... go into effect in February 2014. These families have been forced to pay exorbitant rates for far too long," they wrote. "Although we are disappointed that the court granted a partial stay on other aspects of the Inmate Calling Services Order, we look forward to a hearing on the merits soon, and to adopting further reforms quickly."

A number of individuals and organizations have moved to intervene in Securus' lawsuit, including the D.C. Prisoners' Project, Citizens United for Rehabilitation of Errants (CURE), the Prison Policy Initiative, United Church of Christ's Office of Communication and the Campaign for Prison Phone Justice. See: *Securus v. FCC*, D.C. Circuit Court of Appeals, Case No. 13-1280.

Meanwhile, on December 20, 2013, the Human Rights Defense Center (HRDC) – the parent organization of *Prison Legal News* and co-founder of the Campaign for Prison Phone Justice – submitted a comment concerning the FCC's Further Notice

of Proposed Rulemaking on prison phone-related issues. The comment addressed the importance of ICS reforms, the necessity for reform of intrastate (in-state) ICS services, quality of ICS services, ancillary fees charged by ICS providers and inadequate state-level regulation of intrastate prison phone calls.

Further, on January 13, 2014, HRDC filed a reply comment with the FCC to address issues raised by Pay-Tel, an ICS provider that primarily supplies phone services for local jails. Pay-Tel had argued that rate caps on local calls in 7 states required it to offset losses from local ICS calls with revenue generated from interstate ICS calls, and that the FCC's rate caps on interstate calls would force the company to operate at below cost or go out of business. HRDC noted in its reply comment that three of the states cited by Pay-Tel did not, in fact, have statutory or regulatory rate caps on local calls; one state required a rate cap on only certain types of local calls; and the remaining three states had rate caps ranging from \$2.25 to \$2.70 for a 15-minute local call – which were all "above the safe harbor rates established by the FCC for interstate calls."

Lastly, PLN's December 2013 cover story was accompanied by four charts, including one (Chart D) that listed state-by-state prison phone "commission" kickbacks for 2009 to 2012. The only state with missing data was Maryland, as we had not obtained ICS commission amounts for that state by the time we went to press. The Maryland Department of Public Safety and Correctional Services subsequently provided its prison phone commission data, which included revenue of \$5,022,056 in 2009, \$5,148,620 in 2010, \$5,160,994 in 2011 and \$4,958,265 in 2012.

Thus, the total prison phone commissions received by state DOCs nationwide were \$140,014,346.39 in 2009, \$137,397,425.41 in 2010, \$130,697,906.12 in 2011 and \$128,296,030.61 in 2012. PLN continues to gather data related to prison phone contracts, rates and commissions, and provides this data to the FCC. ■

Sources: FCC news release and joint statement (Jan. 13, 2014), [www.prisonpolicy.org](http://www.prisonpolicy.org)

**STRENGTH STACK 52**

114 BODYWEIGHT EXERCISE CARDS INSIDE!

**JUST \$21.95!\***  
(shipping included)

**Experience the Game of Fit!**

Send money orders or institutional checks made payable to:  
Prisoner Assistant  
Po Box 704  
Lake Harmony PA 18624

**Features:**  
-Soft cover book with perforated-card stock for playing cards.  
-Many fitness games available.  
-Effective NEW bodyweight training system.  
-Exercise your entire body with no equipment.



## Bankruptcy Injunction Covers Pre-petition Incarceration Costs, but Not Those that Accrue Afterwards

**T**HE BANKRUPTCY APPELLATE PANEL for the Eighth Circuit held on February 5, 2013 that a Missouri bankruptcy court was correct in concluding prison officials did not violate a discharge injunction by collecting money from a prisoner's account for incarceration costs that accrued after the injunction was filed.

Missouri prisoner Zachary A. Smith became subject to an \$87,830.13 judgment under the Missouri Incarceration Reimbursement Act (MIRA) on January 20, 2009, for the costs of his incarceration through March 26, 2007. The state of Missouri was also granted a judgment for reimbursement costs accruing after March 26, 2007 through Smith's release from prison – which is unlikely since he is serving life without the possibility of parole. The judgment further allowed the state to collect 90% of all deposits to Smith's prison account, excluding wages and bonuses earned while incarcerated.

Smith filed a Chapter 7 bankruptcy petition on September 14, 2010 and received his discharge on March 11, 2011. In September 2012, the state seized a \$45.00 deposit to Smith's prison account pursuant to the MIRA judgment. He then filed a motion for contempt with the bankruptcy court, claiming the state had violated the discharge injunction. The bankruptcy court agreed that the MIRA judgment was void with respect to all costs accrued as of the bankruptcy filing, but held the judgment remained valid as to

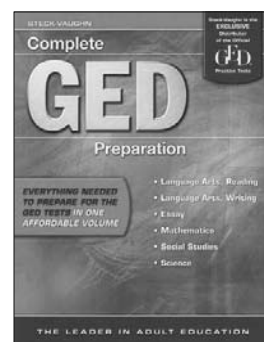
future reimbursement costs and that the costs incurred by the state since Smith's bankruptcy petition were not dischargeable debts.

On appeal, the state agreed the MIRA judgment was void as to pre-bankruptcy petition debt, and the Bankruptcy Appellate Panel upheld the lower court's determination that reimbursement costs incurred after the discharge injunction remained valid. Thus, there was no Supremacy Clause violation. The appellate court also rejected Smith's argument that the \$45.00 was protected because it came from his mother's Social Security benefits. Not only was the issue fruitless because it was raised for the first time on appeal, but such benefits "are no longer protected when the recipient chooses to pay or give away those funds." The bankruptcy court's judgment was therefore affirmed. See: *Smith v. Missouri*, 488 B.R. 101 (B.A.P. 8th Cir. 2013), rehearing denied.

Smith appealed to the Eighth Circuit Court of Appeals, citing a recent Missouri state court appellate decision that held a judgment under MIRA permits reimbursement only from assets to which a prisoner has a present legal right. See: *State ex rel. Koster v. Cowin*, 390 S.W.3d 239 (Mo. Ct. App. 2013).

The Court of Appeals affirmed the decision of the Bankruptcy Appellate Panel on September 25, 2013, citing the *Rooker-Feldman* doctrine – which prohibits lower federal courts from exercising appellate

review of state-court judgments – and finding no violation of the Supremacy Clause. See: *Smith v. Missouri*, 530 Fed.Appx. 616 (8th Cir. 2013). ■



### Complete GED Preparation [Paperback]

Publisher: Steck-Vaughn; 2nd edition  
928 pages; \$24.99; Item #: 1099

Over 2,000 GED-style questions thoroughly prepare learners for test day. This single book offers thorough coverage of the revised GED Test with new test information, instruction, practice, and practice tests. Answer key included.

Order from: **Prison Legal News**  
(Add \$6 shipping for orders under \$50)

**PO Box 1151**

**Lake Worth, FL 33460**

**Phone: (561) 360-2523**

**www.prisonlegalnews.org**

**FREE!**

# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription!

Quarterly drawing **WINS \$100!** (Void in New York)

(Last Quarter's winner from **Somers, CT.**)

**TELL YOUR FRIENDS! ACT NOW!!**

**PO Box 2063 • Fort Walton Beach FL. 32549**

**www.InmateMagazineService.com**



## Inmate Magazine Service



# What Are the Odds of Complete Reversal After Conviction in the Second Circuit?

by Richard Levitt and Peter Schmidt

A POTENTIAL CLIENT ASKS AN ATTORNEY the odds of completely overturning his federal trial conviction on appeal. If the attorney is experienced in the ways of appellate advocacy and his predilection for candor trumps his predilection for solvency, he might tell his potential client, “Statistically, not great. Beyond that, it depends on how serious the case is, the issues we raise and the judges assigned to hear your appeal.”

But, you wonder, what really are the odds of winning an appeal after trial in the U.S. Court of Appeals for the Second Circuit? We wondered that too, so we decided to find out. First we looked at published statistics to see if we could avoid doing the heavy lifting ourselves. The closest we came to an answer was on the uscours.gov website, which includes Table B-5, titled “U.S. Courts of Appeals – Appeals – Terminated on the Merits, by Circuit, During the 12-Month Period Ending September 30, 2012.”<sup>1</sup>

This table reflects an overall nationwide reversal rate in criminal appeals of 7 percent, and a reversal rate in the Second Circuit of 9.2 percent, but does not distinguish between appeals following trial and

appeals following entry of a guilty plea, not to mention appeals from other criminal proceedings such as those involving bail or supervised release. Nor is it clear what is meant by a “reversal,” as some appeals from criminal convictions result in reversal of certain counts but not others. So we did our own digging.

We started by reviewing nearly 6,000 decisions (both published and unpublished) involving criminal law issues that were decided by the Second Circuit between January 1, 2000 and May 31, 2013. We then eliminated all cases in which the defendant(s) pleaded guilty; all habeas decisions; all decisions that solely addressed pretrial motions, such as bail and motions to suppress; and all decisions relating to issues such as revocation of supervised release and similar collateral matters.

We were left with a list of 1,985 cases involving direct appeals from trial convictions in the Second Circuit between January 1, 2000 and May 31, 2013.<sup>2</sup> It is often said that defendants are entitled to a fair trial, not a perfect trial,<sup>3</sup> and so the percentage of complete reversals<sup>4</sup> should reflect the percentage of cases in which appellate

judges determined that the defendant did not receive a fundamentally fair trial. If the judges are guided by this rule, then it follows that they collectively believe that more than 96 percent of trials are fundamentally fair; our research reveals that over the 13 years we examined, the rate of complete reversals was approximately 3.78 percent.

Now, that’s the average. Year by year the results vary significantly, and range from lows of 1.51 percent and 1.57 percent in 2003 and 2005, to highs of 6.75 percent in 2005 and 2012. These are enlightening statistics but they don’t tell the whole story. Attorney Roy Cohn famously said, “Don’t tell me what the law is, tell me who the judge is.” Cohn, of course, was referring to trial level judges and to a slightly different phenomenon than what is typically encountered at the appellate level, but it is no less – and possibly more – true when it comes to appeals, where a judge’s philosophy of appellate review of criminal convictions may trump all other predictors of success when close issues are presented.

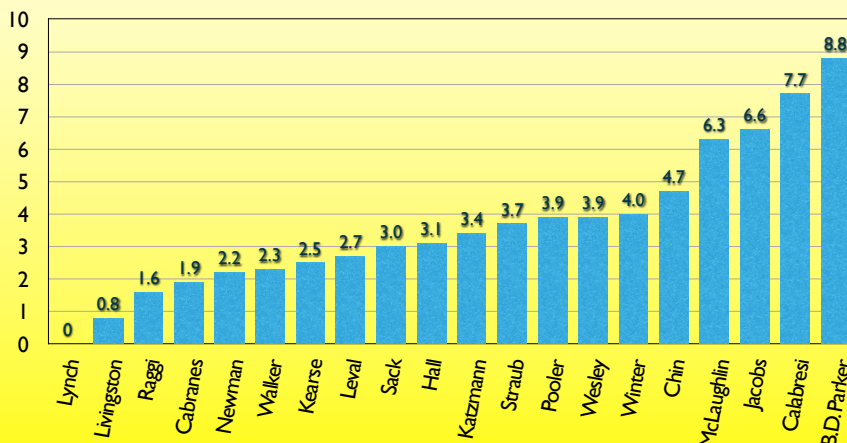
## Reversal Rates

AND SO WE WENT BEYOND A MACRO review of appellate dispositions and examined the reversal rates of every Second Circuit judge on every panel for all 1,985 cases that fell within the survey period. The results were eye-opening. Reversal rates of current Second Circuit judges who sat on at least 50 panels reviewing convictions after trial ranged from 0 percent, .8 percent and 1.6 percent (Judges Lynch, Livingston and Raggi), to 6.6 percent, 7.7 percent and 8.8 percent (Judges Jacobs, Calabresi and Parker). That’s quite a difference. If you draw a panel of judges with the lowest reversal rates, your odds of prevailing, even with an arguably meritorious issue, are vanishingly small. Draw a panel of judges with the highest reversal rates and your chances increase almost ten-fold.

When these statistics were further parsed, we found a substantial disparity between judges with respect to who authors the reversals. For example, Judge Guido Calabresi, who has a high reversal rate, authored only three of the 22 reversals in

## Reversal Rates - Sitting Judges

(January 1, 2000 -- May 31, 2013; minimum 50 panels, to nearest 1/10 percent)



Tuesday, June 18, 13

which he participated during our survey period. Judge Barrington Parker, Jr. wrote seven of his 21 reversals. Judge Rosemary Pooler voted to reverse 14 times and authored nine of those reversals. Chief Judge Dennis Jacobs authored nine reversals. The late Judge Roger Miner voted to reverse only three times while sitting on 158 panels, yet wrote each such opinion. Judge Reena Raggi, by contrast, voted to reverse four times during our survey period but wrote none of those reversals. Judge Robert Katzmann voted to reverse nine times, but authored only one of those decisions. Of the 75 complete reversals during our survey period, 66 were signed decisions, one was a per curiam decision and eight were summary orders.

Four judges – Winter, Parker, Pooler and Jacobs – accounted for 30 of the 66 signed reversals during the 13-year survey period. The varying rates of opinion writing may also have skewed perceptions regarding which judges are most likely to vote to reverse. For example, Pooler authored eight reversals and Judge Joseph McLaughlin only three, but in fact Pooler's reversal rate is 4.6 percent and McLaughlin's is 6.3 percent. This seeming anomaly is explained by Pooler having authored nine of the 14 reversals in which she participated out of a total of 307 panels, whereas McLaughlin authored only three of the 10 reversals in which he participated out of a total of 159 panels. The reversal rates for sitting judges who were part of at least 50 panels that reviewed convictions after trial on direct appeal, between January 1, 2000 and May 31, 2013, are set forth in the table accompanying this article.

Incidentally, U.S. Supreme Court Justice Sonia Sotomayor, during her tenure

on the Second Circuit, sat on 236 panels considering appeals from federal criminal convictions during our survey period. On nine occasions she voted with the majority to reverse – a middling reversal rate of 3.8 percent; she authored two of those opinions.<sup>5</sup>

And what about judges sitting on the circuit by designation? Of the 74 judges who sat by designation during our survey period, Judge Jed Rakoff of the Southern District of New York stands out. He sat on 71 panels reviewing convictions, voted to reverse six times and authored one of those reversals, resulting in a reversal rate of approximately 8.5 percent, which exceeds that of all active Second Circuit judges except Parker.

### Judge or Law?

A PRINCIPAL IMPETUS FOR THE U.S. Sentencing Guidelines was concern over sentencing disparity at the district court level. But what of disparity in the determination of appeals brought in the circuit courts? The results of our survey strongly suggest that an appellant's odds of winning a complete reversal in a close case brought in the Second Circuit are largely determined by which three-judge panel hears the appeal. By any yardstick this seems random and unfair.

Perhaps this disparity could be mitigated through liberal use of en banc review, but the Second Circuit rarely convenes en banc to consider criminal appeals.

And so the next time a defendant in a criminal case asks whether he has a shot at winning a complete reversal of his conviction in the Second Circuit, his attorney can say, "I'll let you know when the panel assignments are published." ■

*Richard Levitt is a partner at Levitt & Kaizer. Peter Schmidt is the publisher of Punch and Jurists, a biweekly online survey of federal criminal law decisions (www.fedcrimlaw.com). This article was originally published by the New York Law Journal in July 2013; it is reprinted with permission, with minor edits. The original article included a chronological list of every complete reversal by the Second Circuit during the survey period.*

### ENDNOTES

<sup>1</sup> www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2012/appendices/B05Sep12.pdf.

<sup>2</sup> These 1,985 cases generated 2,041 decisions because in 56 cases the court issued both published and unpublished decisions.

<sup>3</sup> E.g., *United States v. Gonzalez*, 488 F.2d 833, 836 (2d Cir. 1973) ("Of course, appellant is entitled only to a fair trial, not to a perfect trial").

<sup>4</sup> Although we have not fully distilled our data, our preliminary review suggests that the percentage of cases in which a partial reversal results in meaningful relief, e.g., a sentence reduction, was quite small.

<sup>5</sup> *United States v. Samaria*, 239 F.3d 228 (2d Cir. 2001) and *United States v. Cote*, 544 F.3d 88 (2d Cir. 2008).

**SMITH'S GUIDE to HABEAS CORPUS RELIEF**  
**for State Prisoners under 28 U.S.C. §2254**  
 Example pleadings from the initial habeas corpus petition to the final petition for a writ of certiorari. Let Smith guide you step-by-step through the federal courts with confidence. **380 pages.**

**\$24.95 + \$6.95 shipping & handling.** In CA add \$2.18 sales tax. Sent via USPS media mail Money orders, personal or institutional checks ONLY. Send \$31.90 (In CA, \$34.08) payable to Roberts Company  
 Send name, address, prisoner #, and payment to:  
**Roberts Company, 15412 Electronic Lane #101**  
**Huntington Beach, CA 92649**  
 Also available on Amazon.com

Introducing **THE BUZZ REPORT!** Subscribe today, and get all of your sports scores and lines delivered conveniently to your email inbox, every day! Add **info@sportzzbuzz.com** to your Corrlinks email subscription list for info. on how to get The Buzz!

# The Effects of Private Prison Confinement in Minnesota on Offender Recidivism

**T**HE MINNESOTA DEPARTMENT OF Corrections (DOC) recently completed an evaluation of the effects of private prison confinement on offender recidivism. The evaluation assessed the impact of confinement at the Prairie Correctional Facility (PCF) in Appleton, Minnesota on recidivism among 3,532 offenders released between 2007 and 2009. The average follow-up period for the offenders in this study was 2.5 years.

## Key Findings

- Private prison confinement was associated with a greater risk of recidivism in all 20 Cox regression models that were estimated. This association was statistically significant in 8 of the 20 models.

- All five private prison measures examined in this study significantly increased the risk of reconviction.

- Three private prison measures significantly increased the risk of rearrest.

- None of the private prison variables had an impact on either reincarceration measure (new offense and technical violation revocation).

- The findings suggest that the PCF produced slightly worse recidivism outcomes among the healthiest and best-behaved prisoners for the same amount of money. The recidivism results may be due to fewer visitation and rehabilitative programming opportunities for offenders confined at PCF.

Prior to 2010, when prison population growth created shortages in prison beds at state facilities, the DOC frequently housed

some of its prisoners at the PCF. The facility, which opened in 1996, once held as many as 1,200 Minnesota state prisoners. Operated by Corrections Corporation of America (CCA), a private prison company, the PCF closed in February 2010 due, in part, to slowed growth in Minnesota's prison population, which minimized the need to transfer offenders to non-DOC facilities.

The evaluation examined whether private prison confinement had an impact on recidivism among prisoners released from Minnesota prisons between 2007 and 2009. Of the 9,535 offenders incarcerated in DOC facilities and released to the community during the 2007-2009 period, 1,766 (19 percent) spent at least a portion of their confinement at the PCF. Due to eligibility criteria offenders had to meet in order to be transferred to the PCF, propensity score matching was used to individually match the 1,766 offenders who spent time in the PCF with 1,766 offenders from the comparison group pool of 7,769 prisoners who spent their entire confinement period in state correctional facilities.

Private prison confinement was measured five different ways in this study, and Cox regression analyses were used to determine whether confinement at the PCF had an impact on recidivism.

## Recidivism Results

THE DATA IN FIGURE 1 SHOW THAT OFFENDERS confined at the PCF had higher recidivism rates than the offenders in the comparison group. For example, 47 percent of the offenders in the private prison group had been rearrested for a new offense by the end of December

2010 compared with 41 percent of the comparison group offenders. The results also show that 31 percent of the private prison offenders were reconvicted for a new offense compared to 26 percent in the comparison group. In addition, 14 percent of the private prison offenders were reincarcerated for a new criminal offense compared to 13 percent of the comparison group offenders. Lastly, compared to the offenders in the comparison group, who had a technical violation revocation rate of 31 percent, those in the private prison group had a rate of 33 percent.

Twenty Cox regression models were estimated that assessed the impact of private prison confinement, which was measured five different ways, on the four recidivism measures. The results from the multivariate statistical analyses, which controlled for time at risk and other rival causal factors, revealed that private prison incarceration was associated with a greater risk of recidivism in all 20 Cox regression models that were estimated. This association was statistically significant, however, in only 8 of the 20 models.

While the findings suggest that time spent at the PCF did not have a beneficial impact on recidivism outcomes, it should be emphasized that the PCF confinement did not significantly increase risk consistently across all recidivism measures examined. Moreover, the magnitude of increased recidivism risk was relatively modest (13 percent for rearrest and 22 percent for reconviction) in the models that analyzed any private prison exposure.

## Summary

RECENT RESEARCH ON PRISONERS IN Florida and Oklahoma indicates that con-

## TEXAS ONLY

Post-conviction State and  
Federal Habeas Corpus  
Parole Representation  
Family Law

### Ashley Burleson

Attorney and Counselor at Law  
1001 Texas Avenue, Suite 1400  
Houston, Texas 77002

**inmateMAGS** .com  
formerly MyMagstore.com

Buy 1200 **SINGLE** Copies of Magazines • 1200 **Subscriptions** • **VIP Service**  
1800 **Newspapers** • Payment with **Stamps** • **Prepaid Accounts**  
Send \$3 or 10 Stamps for **50+ Page Full Catalog** (\$3 Discount Coupon Included)

**inmateMAGS.com**  
4208 University Way NE  
Seattle, WA 98105

**www.inmateMAGS.com**  
**Info@inmateMAGS.com**  
206-322-6397



finement in private prisons does not lead to improved recidivism outcomes. Likewise, this study found that private prisons are not more effective in reducing recidivism, which may be attributable to fewer visitation and rehabilitative programming opportunities for offenders incarcerated at private facilities.

The results from this evaluation suggest that private prisons can offer correctional agencies a valuable resource – prison bed space – during periods of sharp population growth. The value of this resource declines, however, if bed space is available in state-operated facilities. More specifically, the evidence from this evaluation and prior studies indicates that private prisons are not a superior alternative to state-run prisons. The findings from this study suggest, if anything, that private prisons produce slightly worse recidivism outcomes among the healthiest and best-behaved prisoners for the same amount of money. ■

*This March 2013 research summary is re-printed with permission from the Minnesota Department of Corrections.*

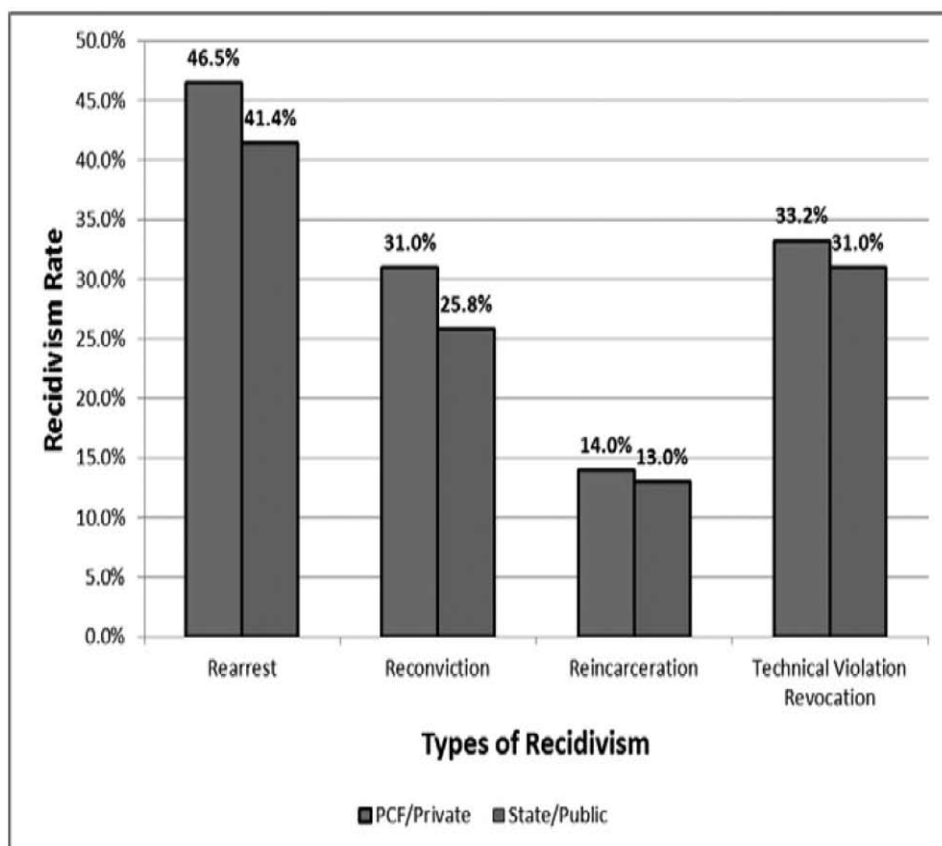


Figure 1. Recidivism Rates for Private Prison and Control Group Offenders

## NEW FRIENDS, HIGHER EDUCATION, AND EMPLOYMENT & HOUSING UPON RELEASE THROUGH WRITEAPRISONER.COM PROFILES

**Contact WriteAPrisoner.com & Start Looking Forward To Mail Call!**

AS SEEN ON

CNN, 20/20, Fox News,  
Dr. Phil, O Magazine,  
E! True Hollywood,  
and hundreds more!

**WriteAPrisoner.com...**

Simply the largest, highest ranked, & most visited website of its kind!\*

- Pen-pal Profiles are affordably priced at \$40 for the first year, \$30 for renewing year
- Features a comprehensive search that allows viewers to find your profile by age, race, location, keywords, & more - 32 search options in all
- Your new friends can email their first message to you along with a photo
- Advertises non-stop on every major search engine with thousands of websites linking back to us
- Offers free Reintegration Profiles for inmates seeking employment and housing upon release and education during incarceration
- Translated into 51 languages & geared for international search engines
- Viewers can "subscribe" to your profile to be notified when your profile is updated, blog is added, artwork is posted, poetry is added, your release is near & much more
- Pen-pals have the option of helping you with a broad range of topics using WriteAPrisoner.com's free Self-Help Series



**Get Started Today!**

Friends & family can submit your entire 250 word profile, photo, and payment for you online by visiting

[www.writeaprisoner.com/post](http://www.writeaprisoner.com/post)

Or for a FREE Brochure, Send a S.A.S.E. to:

WriteAPrisoner.com  
PO Box 10- PLN  
Edgewater, FL 32132 USA

mSP | LAW



**Michael Soukup**  
Licensed in Wisconsin and Illinois



**Matthew Pinix\***  
Licensed in Wisconsin

## Appealing a Conviction? Hire an Appellate Attorney.

You wouldn't hire a **heart surgeon** to perform **brain surgery**. Don't hire a **trial attorney** to handle **your appeal**. Hire someone who focuses on **criminal appeals**.

Hire the **Law Office of Matthew S. Pinix**, attorneys with more than 10-years' combined experience handling **criminal appeals** in **Wisconsin** and **Illinois**.

**Law Office of Matthew S. Pinix, LLC**  
1200 East Capitol Drive, Suite 220  
Milwaukee, Wisconsin 53211  
(414) 963-6164  
[www.pinixlawoffice.com](http://www.pinixlawoffice.com)

- » Rated by Super Lawyers\*
- » Rated by avvo.com
- » Better Business Bureau accredited

# Confronting Prison Slave Labor Camps and Other Myths

by James Kilgore

**T**HERE ARE MOMENTS WHEN OUR longings for social justice cloud our vision, times when the way we want the world to be blocks our understanding of the way things really are. A good example of this is the notion of the United States' prison system as totally driven by profit-hungry corporations that ruthlessly advance their bottom lines on the backs of the exploited.

This myth contains a modicum of truth: of course, the 1 percent and beyond do make money off of locking people up. Corporations like Kitchell Construction have done very well building more than 110,000 prison "beds." At roughly \$100,000 each, that comes to about \$11 billion, which is pretty serious money. Despite the fields of money that have been reaped from the prison and jail boom, this economic aspect of prisons has spawned some myths that often get in the way of effectively opposing mass incarceration.

The first of these is the idea that private prison corporations are the main culprits. A wide spectrum of campaigns has focused on these corporate targets. Activists have opposed private prisons' attempts to colonize

new territory, blocking immigration detention center proposals in Illinois, halting a bill to privatize the entire prison system of the state of New Hampshire and driving the GEO Group "brand" off the face of the football stadium at Florida Atlantic University.

These are inspiring victories and such struggles will continue. However, we also need to keep the bigger picture in mind: private prisons are not the heart of the beast. In reality, at least for the moment, they are bit players. Among them, they only control about 8 percent of prison beds in the system nationwide. They are more important in certain states (e.g., Texas, New Mexico) and are also a primary force in the key current growth area for incarceration – immigration detention centers, where they own and/or operate about half the immigration detention beds.

But if we follow the money, we find that the total revenue for the two largest prison providers, Corrections Corporation of America (CCA) and the GEO Group, came to a little over three billion dollars in 2012. That is less than half the state

corrections budget for California. The real villains in the world of the incarceration game remain the state prison systems.

While economics is more than incidental in the expansion of prisons, mass incarceration remains a politically-driven project that has built a huge popular base of support. Politicians have played the "law and order" card and fear of crime card, and the middle classes across the country have responded, often supporting the construction of more carceral institutions at the expense of education and other social services. Although there is a special immorality about making profit from caging people, especially given the disproportionate incarceration of African Americans and Latinos, it is no less morally bankrupt to spend taxpayers' money for prisons and jails at the expense of jettisoning the country's social welfare system and self-identity as a caring society.

Moreover, even though tales of abuse in private prisons abound, the state and federal prison systems have given us the supermaxes and Special (or Security) Housing Units (SHUs), where people live in torturous total isolation for years on end. Florence ADX, Pelican Bay SHU and the isolation units in Angola, Louisiana are all government-operated institutions. In fact, the privates try to stay away from the "hard cases," preferring to focus on cherry-picking people with nonviolent convictions and no major medical problems. Recruiting low cost "clients" helps the bottom line. So let us remember to confront the political powers that be, including some cherished icons in

## WHEN IT IS YOUR FAMILY'S FUTURE, EXPERIENCE MATTERS STATE AND FEDERAL POST-CONVICTION AND APPEALS

Licensed since 1995, hundreds of appellate briefs and habeas petitions, capital qualified for habeas and appeals in Texas and U.S. Southern District of Texas, Motions for New Trial, Rule 35 and 60b motions, re-sentencing and arrest of judgment.

Call or write the Law Offices of Patrick F. McCann, 713-223-3805.

909 Texas Ave, Ste 205, Houston, Texas 77002 • writlawyer@justice.com

**Serious financial inquiries only.**

## Earn an Adams State University Degree via Correspondence Courses



- Correspondence Courses via mail • No internet access required
- Degree options available — Associate of Arts or Science, Bachelors degrees in English, Business Administration, Government, History, Interdisciplinary Studies, Sociology, Paralegal Certificate Program, Masters Degree in Business Administration
- Affordable tuition — \$165/semester hour for undergraduate correspondence courses, \$350/semester hour for Masters level correspondence courses  
Payment options include cashiers check, credit card, money order or verified personal check
- Accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools
- 16+ years of experience serving incarcerated students
- Veteran friendly
- FREE unofficial evaluation of previously earned credits



Call or write to receive additional information — 800-548-6679  
Adams State University  
Office of Extended Studies, Suite 3000  
208 Edgemont Blvd. Alamosa, CO 81101  
www.adams.edu



the Democratic Party, with at least as much venom as the private corrections companies when we carry out our campaigns.

The second convenient myth of the prison system is that it is nothing more than a string of slave labor camps where hundreds of thousands, if not millions, of people work under contract to major corporations for meager wages. Late last year, researchers Stephen Fraser and Joshua B. Freeman released a study which claimed that “penitentiaries have become a niche market for such work. The privatization of prisons in recent years has meant the creation of a small army of workers too coerced and right-less to complain.”

Their perspective has resonated with a number of news services, anti-mass incarceration bloggers and activists. For example, a report from Russian news service RT claimed that prisons are “becoming America’s own Chinese-style manufacturing line.” *Huffington Post* picked up the story, quoting Fraser and Freeman: “All told, nearly a million prisoners are now making office furniture, working in call centers, fabricating body armor, taking hotel reservations, working in slaughterhouses, or

manufacturing textiles, shoes, and clothing, while getting paid somewhere between 93 cents and \$4.73 per day.”

Fraser and Freeman went on to name a number of companies like Chevron, Bank of America, AT&T and IBM that allegedly are making superprofits from cheap prison labor. I spent six and a half years in federal and state prison systems, and this analysis has little relation to reality. Modern-day prisons are warehouses. People suffer and die in prison from the total lack of stimulus and activity. My recollections of prison yards are of hundreds of men trying to pump some meaning into their lives with maniacal exercise routines, obsessive cleaning of their living quarters or absolute devotion to religious practice. Many also organized hustles – sports betting pools, making arts and crafts or writing legal briefs to make a few extra bucks for a jar of coffee or a few candy bars from the commissary. Some, though a distinct minority, found a way to focus on intellectual growth. But working in a corporate sweatshop was not on our radar.

The statistics on this bear me out. Virtually all private-sector prison labor

is regulated under the Prison Industries Enhancement Certification Program (PIECP). Any prison that publicly markets goods worth more than \$10,000 must register with PIECP. PIECP’s first-quarter report for 2012 showed 4,675 incarcerated people employed in prison or jail PIECP programs. This represents about 0.25 percent of the 2.3 million people behind bars in U.S. prisons and jails.

Likely the largest single user of contract prison labor is Federal Prison Industries, which handles such arrangements for the Bureau of Prisons (BOP). Of the nearly 220,000 people held in BOP facilities, just 13,369 – representing approximately 8 percent of work-eligible “inmates” – were employed as of September 30, 2012. However, the overwhelming majority of this production was under contracts with government agencies such as the Departments of Defense and Homeland Security, not private corporations.

There is an economic logic to why so few corporations use prison labor, despite the low wages and apparent rigid control over the workforce. Prisons are first and foremost about security. Production takes a back seat



## *Gold Star Fragrances*

4 West 37th St

New York, New York 10018

Tel. 212.279.4474; Tel. 212.279.4470

Fax. 212.279.4471

email: [gstarfragrances@gmail.com](mailto:gstarfragrances@gmail.com)

website: [goldstarfragrances.com](http://goldstarfragrances.com)

We are the original distributor and importer of the finest perfume oils.

We carry over 1000 of the original and best perfume oils, soaps, incenses, body lotions, shower gels, body massage, bottles and more.

All of our oils are shipped in plastic bottles.

Catering to correctional facilities since 1976.

## Confronting Prison Myths (cont.)

when there is violence on a yard, especially if it is directed at staff. A security situation may lock down a prison for days, weeks or even months. No production deadlines are going to get in the way of security. Given that reality, along with the excessively bureaucratic nature of corrections institutions, sweatshops in the global South look like a much better bet for corporate profit margins. The claim by Vicky Pelaez in *Global Research* in 2013 that “thanks to prison labor, the United States is once again an attractive location for investment in work that was designed for Third World labor markets” is totally off the mark.

Such misconceptions about the connection between incarceration and labor do more than merely distort the facts. They also draw our attention away from the central labor issues underlying the growth of the prison population. Prison expansion is a by-product of the immiseration of urban neighborhoods, especially those that are largely African American. This deindus-

trialization has robbed these communities of jobs and the neoliberal restructuring of the state has stripped away the institutions of social welfare.

Instead, money has poured into security and narrowly defined “public safety” – fighting a failed War on Drugs and beefing up local police departments through federal grants that equip small-town law enforcement as if they are in the middle of a war zone. Even my own small county of Champaign in central Illinois has found the resources to purchase a drone, while mental health facilities continue to close down.

The negative impact of incarceration on this displaced and discarded urban workforce continues even once they have completed their sentences. People with felony convictions cannot get food stamps in many states, or qualify for TANF. Many local housing authorities bar people with drug convictions, often evicting the family of those returning from prison if they house their loved ones post-release.

The job market is hostile territory as well for those with a felony. Though a “Ban the Box” movement has scored victories in 10 states and over 40 counties and cities, most employment applications still contain the question about criminal background. For those of us with felony convictions, that question equates with an instant closing of the door of opportunity.

Then there are all the occupations and professions with certification processes that bar or restrict people with felonies. For example, a study by the Mayor of Chicago’s office found that of 98 Illinois state statutes dealing with professional licensing, 57 contained restrictions for applicants with a criminal history. Even some people applying for licenses to become barbers or

cosmetologists faced legal impediments.

People who have been involved in opposing mass incarceration often refer to the entire system as the prison industrial complex, or PIC. Certainly, the prison sector constitutes an industry. But as the term PIC implies, the relationships between the political and economic forces at work in this process are complex. Though it is convenient to focus on corporations as the main drivers of the grandest social policy debacle of the last three decades, mass incarceration will only be reversed when we effectively contest its political agenda. That agenda is founded on the idea of criminalizing the poor and building on the fear of the rising presence of people of color in this country.

As Ruthie Gilmore and Michelle Alexander have pointed out, it is part of a broader political backlash against the “welfare state” and the social movements of the 1960s and 1970s, especially the Black liberation struggle. We do need to stop the CCAs and the GEO Groups to fundamentally change the criminal justice system in the United States, but, more important, we need to dislodge the mindset and the political leaders who have built popular support for a “lock ‘em up and throw away the key” ideology. ■

*James Kilgore is a research scholar at the Center for African Studies at the University of Illinois (Urbana-Champaign). He writes on issues of mass incarceration with a focus on electronic monitoring and labor. He is also the author of three novels, all of which he drafted during his six and a half years in prison, from 2002–2009. He can be contacted at [waaazn1@gmail.com](mailto:waaazn1@gmail.com) or by visiting his website at [www.voiceofthemonitored.com](http://www.voiceofthemonitored.com). This article was originally published in the Social Justice Journal ([www.socialjusticejournal.org](http://www.socialjusticejournal.org)); it is reprinted with permission.*

- Habeas Corpus specialists
- Post Conviction Assistance
- State and Federal
- 10+ years experience
- Proven Results

### Legal Insights Inc.

25602 Alicia Parkway #323  
Laguna Hills, CA 92653  
714-941-0578

[www.legalinsights.org](http://www.legalinsights.org)

A California 501(c)(3) Non-Profit Organization

## CASH FOR YOUR STAMPS

**P. O. Box 687-P, Walnut, Ca. 91788**

Get the HIGHEST return for ALL of your stamps!

Rapid processing and payment sent to your designee (No Package, Book, or Magazine Vendors Please)

**70% OF FACE VALUE** for Books and Sheets of “Forever” Stamps in new or excellent.\*

**60% OF FACE VALUE** for Books and Sheets of Other Denominations in new or excellent condition.\*

**50% OF FACE VALUE** for all books, sheets, or rolls that are not in new and complete condition.

**\*NEW CONDITION MEANS NO FOLDS, NO WRITING, AND ALL STICKERS IN TACT.**

**NO SINGLE STAMPS (GROUPS OF 2 OR MORE).** Stamped envelopes must be #10 with no markings.

**\$15.00 Min. Money Orders. Damaged or Taped Stamps Not Accepted/Returned. Send SASE for Brochure.**

## Ninth Circuit: 9-Year Detention Pending Civil Commitment Proceeding Warrants Habeas Relief

IN MARCH 2013, THE NINTH CIRCUIT Court of Appeals reversed a district court's dismissal of a pro se habeas petitioner's claim that his 9-year detention while waiting for the State of California to initiate civil commitment proceedings was unconstitutional.

Just before convicted rapist Bobby Joe Knight's scheduled release from prison in 2004 after serving a 20-year sentence, the state filed a civil petition against him under California's Sexually Violent Predator Act (SVPA), Cal. Welf. & Inst. Code §§ 6600, *et seq.* The Los Angeles County Superior Court ordered that Knight be held in a secure facility pending trial.

Knight remained in custody, as no effort was made to bring the state's petition against him to trial. Incredibly, between 2004 and 2009, Knight's counsel requested (or stipulated to) continuances of the case. Not content with the quality of his representation – being deprived of one's liberty indefinitely, without due

process of law, can be frustrating – Knight repeatedly requested that he be appointed new counsel.

Exasperated, he filed a habeas corpus petition in state court in April 2009, claiming that his lengthy detention was unconstitutional. The petition was denied, and Knight's counsel and the government agreed to still more continuances.

In December 2009, Knight filed for habeas relief in federal court. [PLN readers should note that Knight's habeas petition was brought under 28 U.S.C. § 2241 and thus not subject to the demanding restrictions of AEDPA]. The district court dismissed the petition, concluding that because Knight was challenging ongoing state civil commitment proceedings, it could refuse to hear his case under the doctrine of abstention espoused by the Supreme Court in *Younger v. Harris*, 401 U.S. 37 (1971).

The Ninth Circuit reversed, holding

that Knight's SVPA civil commitment proceedings were not ongoing, and thus *Younger* abstention did not apply. "Knight's SVPA petition proceedings were not 'ongoing,' except in name only, when he filed his federal habeas petition," the Court of Appeals wrote.

The case was remanded to the district court with instructions to issue a conditional writ of habeas corpus requiring the state to try Knight within 90 days or release him and dismiss the SVPA petition. See: *Knight v. Ahlin*, 709 F.3d 1296 (9th Cir. 2013).

However, while motions for rehearing and rehearing en banc were pending following the Ninth Circuit's decision, the parties filed a joint motion to dismiss. Accordingly, the appellate court dismissed Knight's appeal, vacated its original decision and remanded the case with instructions to dismiss. The earlier ruling can not be cited as precedent. See: *Knight v. Ahlin*, 714 F.3d 1117 (9th Cir. 2013). ■



### Friends and Family Can Easily Mail You Pictures!!

With over 75,000 photos shipped to inmates across the country, Fotopigeon is the easiest way for people to send you pictures right from their phones or computers.

Fotopigeon automatically prints and delivers high-quality 4x6 photos to you from a photo lab!

Just have your loved one sign up for a FREE account at: [www.SendMeAPhoto.com](http://www.SendMeAPhoto.com). Their first photo is free!

Receive photos within 3-5 business days depending on shipping time. Fotopigeon is available to all inmates.

Have questions?  
call (530) 377-3686 or  
add us at corrlinks at  
[inmate@fotopigeon.com](mailto:inmate@fotopigeon.com)



PIGEONLY INC. PO BOX 7517 LAS VEGAS, NV 89126

Talk 20 minutes  
free each  
month on us!

To talk more, plans  
start at just \$4.99 /month

tell your loved one to text the word  
"NEWS" to 510-402-1313  
the lowest prices in the business

add us at corrlinks [inmate@telepigeon.com](mailto:inmate@telepigeon.com)

Telepigeon available to federal inmates only



# Possession of Rape Video Warrants Restitution; Victim Awarded Over \$1 Million Thus Far; Supreme Court Grants Cert.

**W**HEN SHE WAS A LITTLE GIRL, AMY'S uncle videotaped himself raping her, then shared the video with other pedophiles. Now in her 20s, Amy (a pseudonym) is seeking restitution from everyone who has ever possessed and viewed the pornographic images of her. The extent to which she is entitled to restitution is now before the Supreme Court.

Years ago, when Amy was 8 years old, a pedophile asked her uncle to rape her and videotape the assault, according to government documents. Her uncle sexually abused her, was convicted and sentenced to prison. Amy collected a few thousand dollars in restitution from her uncle.

She initially healed from the abuse, but "drastically deteriorated" when she learned, years later, that images of her rape were being widely collected and traded by other pedophiles online.

Amy suffers ongoing trauma because she is constantly revictimized but is powerless to stop it, her lawyer stated. She developed emotional and psychological problems; for example, she bit her nails until they bled, abused alcohol and could not finish college.

On average, every day Amy's attorney is notified of at least one new case involving images of her rape. So far he has been notified of over 1,500 cases and estimates that at least 10,000 pedophiles have possessed the images.

"A reasonable estimate of the total number of persons who will collect Amy's image over the course of her lifetime is 100,000," her restitution petition alleges.

Since 2008, University of Utah law professor Paul Cassell and New York attorney James R. Marsh have filed hundreds of restitution requests on Amy's behalf, under 18 U.S.C. § 2259. Each request seeks approximately \$3.3 million, though the awards are typically much smaller than that amount. Amy has been awarded more than \$1 million in restitution thus far, according to Cassell.

Once she has recovered enough money to cover her losses, Amy will stop seeking restitution, Cassell said. Yet he noted that the ubiquitous pornographic images of her rape will likely never be completely eliminated, given the nature of the Internet.

Courts have disagreed about victims' right to restitution in cases like Amy's. "We're talking about an area of the law that just plainly is not settled," said Meghan Ryan, an assistant law professor at Southern Methodist University.

While some courts have awarded Amy the requested restitution, others have refused without a showing of "proximate cause" – a direct connection – between the harm she suffered and the pedophile's possession of images of her.

For example, Texas resident Doyle Randall Paroline pleaded guilty to federal charges of possessing child pornography, including two images of Amy's rape. After he was sentenced to two years in prison, federal prosecutors moved for full restitution for Amy. Paroline's attorney, Stanley Schneider, while acknowledging that Amy was "horribly abused," argued she was not entitled to restitution because she had not shown a direct connection between the harm she suffered and Paroline's possession of images of her abuse. The district court agreed, finding it could not determine how much of her loss was directly caused by Paroline, and denied Amy's restitution request.

The government reversed course on appeal and joined Paroline's argument that the victim must show "proximate cause" to obtain restitution. The U.S. Department of Justice's position was "that we need to be able to prove proximate cause of the harm," said Camille Sparks, an Assistant U.S. Attorney for the Northern District of Texas and coordinator of Project Safe Childhood. "It's not an impossible burden," she noted,

"but it's a hard burden."

On October 1, 2012, the Fifth Circuit Court of Appeals, in an en banc decision, rejected the arguments of Paroline and the Department of Justice, concluding that it is unnecessary to show a direct connection between the victim's harm and the possession of images of that harm. See: *Paroline v. Amy Unknown*, 697 F.3d 306 (5th Cir. 2012).

However, the Court of Appeals subsequently granted a petition for rehearing en banc, consolidated Paroline's case with an appeal raising similar issues in a Louisiana federal prosecution, and issued another decision on November 19, 2012 that vacated its prior ruling.

Amy's attorney had argued that as a matter of grammatical construction, the "proximate cause" requirement of § 2259(b)(3)(F) was only applicable to "any other losses suffered by the victim" and not to the enumerated categories of losses specified in § 2259, such as medical and mental health care, lost income and attorneys' fees.

Parsing the language of the statute, the Fifth Circuit agreed, holding "that § 2259 only imposes a proximate result requirement in § 2259(b)(3)(F); it does not require the Government to show proximate cause to trigger a defendant's restitution obligations for the categories" of enumerated losses in § 2259(b)(3)(A) through (E).

"Accordingly, we hold that § 2259 requires a district court to engage in a two-step inquiry to award restitution where it determines that § 2259 applies. First, the district court must determine whether a person seeking restitution is a crime victim under § 2259.... Second, the district court must ascertain the full amount of the victim's losses as defined under § 2259(b)(3)(A)-(F), limiting only § 2259(b)(3)(F) ["any other losses"] by the proximate result language contained in that subsection...."

The Court of Appeals concluded, "we reject the approach of our sister circuits and hold that § 2259 imposes no generalized proximate cause requirement before a child pornography victim may recover restitution from a defendant possessing images of her abuse." Accordingly, the district court's judgment in Paroline's case was vacated and remanded. See: *In re: Amy Unknown*, 701

## Pen Pals for Prisoners

Your ad on the Internet worldwide:

One year for \$9.95. Mail name &

address for FREE order form or online:

[www.PrisonerPal.com](http://www.PrisonerPal.com)

PO Box 19689

Houston, TX 77224



F.3d 749 (5th Cir. 2012), *cert. granted*.

On June 27, 2013, the Supreme Court granted certiorari as to the following question: "What, if any, causal relationship or nexus between the defendant's conduct and the victim's harm or damages must the government or the victim establish in order to recover restitution under 18 U.S.C. § 2259?"

The Supreme Court's interest in this issue is likely due to a circuit split: Both the Second and Ninth Circuits have held that child pornography victims are not able to recover restitution in cases where a defendant's actions were not a proximate cause of their injuries. See: *United States v. Aumais*, 656 F.3d 147 (2d Cir. 2011) and *United States v. Kennedy*, 643 F.3d 1251 (9th Cir. 2011) [*PLN*, Oct. 2011, p.26]. The Fourth Circuit reached a similar conclusion in *United States v. Burgess*, 684 F.3d 445 (4th Cir. 2012), as did the D.C. Circuit. See: *United States v. Monzel*, 641 F.3d 528 (D.C. Cir. 2011), *cert. denied*.

The case remains pending before the Supreme Court. ■

Additional source: *Dallas Morning News*

## California: Felons with Prior Juvenile "Strikes" Excluded from County Jail Placement Under Realignment Act

THE CALIFORNIA COURT OF APPEAL held on March 20, 2013 that a prisoner whose prior record includes a juvenile adjudication for a serious or violent felony may not receive a county jail commitment, even if that was the intent when the legislature, in response to a federal court order mandating that the state prison system reduce its population, passed the Realignment Act (Act). [See, e.g.: *PLN*, Aug. 2013, p.20].

Under the Act, most prisoners with felony convictions are now committed to county jails instead of state prisons. Consistent with the Three Strikes Law, the Act excludes from its provisions prisoners with prior serious or violent felony convictions. Although the Act is silent about prior juvenile adjudications, its legislative history suggests that lawmakers had intended to exclude from prison felons whose prior "strikes" were the result

of juvenile adjudications.

Such an interpretation of the Act, however, would conflict with the Three Strikes Law, which requires a commitment to state prison for any felon with a serious or violent strike – regardless of whether or not the strike was a juvenile adjudication.

The Court of Appeal held that this conflict must be resolved in favor of the voter-approved Three Strikes Law, which, as an initiative statute, may only be amended with voter approval or, under its express terms, by a two-thirds vote of the legislature. Thus, prisoners with serious or violent felony convictions as a result of juvenile adjudications are ineligible for county jail placement under the Act. See: *People v. Delgado*, 214 Cal.App.4th 914, 154 Cal.Rptr.3d 337 (Cal.App. 2d Dist. 2013), *review denied*. ■



**JailCallsUSA**  
**\$9.95** per month  
**\*UNLIMITED JAIL CALLS\***  
**"WE BEAT ALL OUR COMPETITORS"**  
**SWITCH TO US TODAY!!**  
No Contracts  
No Credit Checks  
No Equipment to buy  
**LOWER THE CALL RATES FOR:**  
GLOBAL TEL LINK  
SECURUS  
V-CONNECT  
PAYTEL  
ICSOLUTIONS  
VAC  
PLUS MORE  
**FEDERAL \* STATE \* COUNTY**  
SAME DAY ACTIVATION - NO PER MINUTE CHARGES ON OUR END. JUST \$9.95 A MONTH!  
**GET A LOCAL NUMBER TODAY**  
**888-776-2012**  
**www.JailCallsUSA.com**  
Online Payments Accepted **PayPal** 



**ORDER THE NEW PRISON OFFICIAL CATALOG - ONLY \$10**  
**PRISON OFFICIAL**  
**INMATES #1 RECOMMENDED**  
**ISSUE#1 OR ISSUE#2**  
**\$5 FREE HOT MODEL PHOTOS INCLUDED WITH PURCHASE!**  
**CORRECTIONAL FACILITY APPROVED**  
**GET MAIL**  **DONT DELAY**  
**ORDER THE NEW PEN PAL LIST**  
**OF 50 REAL ADDRESSES TO**  
**FEMALES WAITING TO CORRESPOND**  
**TO PRISONERS**  
**RECENT PHOTOS INCLUDED!**  
**SEND \$49.95**  
  
Inmates post your profile on our Pen Pal website  
**www.PrisonOfficial.com**  
2 year membership - Send \$30  
250 word limit send S.A.S.E for return of your photo  
**Send Facility Checks/Money Orders To:**  
**MUST ADD \$2 S/H**  
**TO ALL ORDERS**  
**PRISON OFFICIAL**  
**P.O. BOX 1427**  
**WARRENVILLE IL 60555**

# PA Prison Lieutenant Fired After Assisting in Criminal Investigation

**A** FORMER PENNSYLVANIA PRISON lieutenant might now have a better understanding as to why many prisoners refuse to assist in criminal investigations.

In January 2011, Lt. Vincent Schaffer, 45, then a unit manager in F Block at SCI-Pittsburgh, was approached by an internal affairs officer to gather dirt on a fellow guard who was later charged with 89 criminal counts, including sexual assault.

"I was uncomfortable with my involvement in assisting in a criminal investigation because that is not what I do," Schaffer said in a 2012 interview.

However, he claimed his initial refusal would have been a violation of the code of ethics and that he risked disciplinary action if he failed to cooperate. Thus he ultimately complied, gathering information from a prison informant, and was subsequently terminated after 18 years with the Department of Corrections.

"I had a lot of pride in my job, and I gave the department 100% every day," Schaffer said. "To believe that I was put in this position, and to even try to comprehend that the department and the commonwealth have flat-out turned their backs – I don't even know the words."

As a result of the investigation, former SCI-Pittsburgh guard Harry F. Nicoletti was charged with targeting sex offenders – most of them on F Block awaiting transfer to other prisons – for abuse and sexual assault. Six other guards were criminally

charged, and the facility's superintendent and three top managers were fired. [See: *PLN*, Nov. 2012, p.40; April 2012, p.1].

"Everyone below me got suspended," Schaffer said. "Everyone above me got fired."

What remains unclear is exactly why Schaffer was eventually terminated, and whether his firing was related to his position as unit manager over F Block or his assistance with the internal investigation.

Schaffer claimed that the demands of the investigation – including clandestine meetings with prisoner informant Casey Oliver – were so nerve-racking that he applied for workers' compensation in June 2011, which was denied. He then used up all of his vacation time and sick leave, went on family and medical leave, and began receiving unemployment benefits.

After obtaining medical clearance in March 2012 to return to work – but not at SCI-Pittsburgh because it could exacerbate his symptoms – Schaffer said he was told by a corrections official to either "return to full-time, full-duty work ... with a release from the health care provider," or retire or accept termination. Without a doctor's release, Schaffer applied for disability retirement, was denied and then was terminated – indicating that prison employees who assist with criminal investigations are not immune from adverse outcomes.

Nicoletti was convicted of 27 charges, including official oppression, simple assault, criminal solicitation and terrorist threats, and sentenced in March 2013 to probation and six months of house arrest. [See: *PLN*, May 2013, p.12]. ■

Source: *Pittsburgh Post-Gazette*

## PLN Settles Censorship Suit Against Texas County Jail for \$175,000

**I**N DECEMBER 2013, PRISON LEGAL News settled a federal lawsuit against Upshur County, Texas that alleged unconstitutional censorship when PLN's publications were rejected by jail officials. The suit, filed in October 2012, named the county, Sheriff Anthony Betterton and Sheriff's Lt. Jill McCauley as defendants.

According to the complaint, the

Upshur County jail's inmate handbook contained "no written criteria explaining when a publication will be rejected," and the jail's mail policy did "not provide a sender any notice or explanation when a book is censored."

PLN mailed copies of its monthly publication to prisoners at the jail, as well as letters, renewal notices, brochures and copies of a book titled *Protecting Your Health*

### CALIFORNIA LIFER NEWSLETTER

**CLN:** A comprehensive newsletter mailed every 6-8 weeks. State and federal cases, parole board news, statistics, legislation and articles on prison, parole and correctional issues of interest to inmates and their families.

**CLN** also provides services such as copying and forwarding federal and state cases, articles and news and materials available on the Internet.

**SUBSCRIPTIONS:** Prisoners: \$25 (or 80 stamps) per year (6 issues minimum). Free persons: \$90.

**CLN, PO Box 277, Rancho Cordova, CA 95741**

### Incarcerated Entrepreneur Freight Agent Training Course 12 Module Training

course takes you through everything you will need to graduate and be a certified freight agent moving freight for commission.

Toll Free 1-877-238-9185

S.A.S.E. For more information To:

Lone Wolf Institute

1015 Townsend Dr. Pochontas, AR 72455

Payment plans available from \$25.00

[lonewolfarkansas@gmail.com](mailto:lonewolfarkansas@gmail.com)



and Safety. The jail rejected approximately 90 of PLN's publications over a one-year period, stamping them "No Newspaper," "Unauthorized Mail," "Not Approved" or "Refused." The jail also rejected legal mail sent to prisoners by PLN's attorneys. No notice was provided regarding this censorship, and PLN was not afforded an opportunity to appeal the rejection of its publications.

"The purpose of jail is to hold the criminally accused for trial, not to punish them," said Lance Weber, general counsel for the Human Rights Defense Center (HRDC), PLN's non-profit parent organization. "Depriving pretrial detainees too poor to afford bail – who are presumed innocent – of access to information that could assist them in enforcing their rights is inexcusable."

On September 30, 2013, the district court granted PLN's motion for a preliminary injunction, finding "The evidence suggests that at least some of PLN's correspondence with prisoners has been withheld from its intended recipients, depriving Plaintiff of its First Amendment rights without due process of law."

The jail had adopted a new mail policy prior to entry of the preliminary injunction; the court found the revised policy was a "clear improvement," but "still falls short of establishing the minimum procedural safeguards constitutionally required to protect PLN's First and Fourteenth Amendment rights." The district court further held that PLN was likely to prevail on the merits of the case. Upshur County subsequently agreed to settle.

According to the terms of the settlement, entered as a consent decree, the defendants will implement a new Correspondence and Incoming Publications Plan at the jail, to include "disseminating a copy of the New Policy to all employees of the Upshur County Jail and confirming that each recipient has read the same, disseminating the New Policy to members of the general public by posting it conspicuously on a website maintained by or on behalf of the Upshur County Sheriff's Office, and disseminating a copy of the New Policy to inmates by including it in the inmate handbook and by posting a copy in common areas for at least fourteen days."

The jail's new mail policy provides that prisoners can receive periodicals,

books, newspapers, brochures, magazines and other correspondence – subject to specified security concerns – and that both prisoners and those who send them mail will receive notification of any censorship by jail staff, and will have the ability to appeal same. The county also agreed to pay \$175,000 in damages, costs and attorneys' fees.

"We are pleased with the outcome of this case, though it could have been resolved much earlier, at much lower cost to Upshur County, had county officials acknowledged

that the previous mail policy in effect at the jail was inadequate," said PLN editor Paul Wright.

PLN was ably represented by attorneys Thomas S. Leatherbury, Sean W. Kelly, Kimberly R. McCoy and Marissa A. Wilson with the Dallas law firm of Vinson & Elkins LLP; Scott Medlock and Brian McGiverin with the Texas Civil Rights Project; and HRDC general counsel Lance Weber. See: *Prison Legal News v. Betterton*, U.S.D.C. (E.D. Texas), Case No. 2:12-cv-00699-JRG. ■

## LET US HELP GET YOU HOME!

D&D Worldwide Services LLC, is an Inmate Service Provider. We create parole plans and provide parole plan documentation services worldwide. We are a team of Christian Professional Consultants with over 14 years experience with the prison system. Our services are intended to guide Pro-Se Clients in the "Right Direction" while assisting them during the parole review process.

We focus on showing the Parole Board a Real Person, the Positive Outcome of Incarceration, and we focus on showing you to be a Favorable Candidate for Parole!

### We offer two service options:

#### Full Service (Texas Only) & Standard Service (Worldwide)

**Full Service** – Our office will collaborate the details, gather all the essential documents, create into a detailed personalized parole plan, and provide updates of the major occurrences of the file. Services are provided UNTIL an approval is granted or you are released from prison. Service fee is \$600.00.

**Standard Service** – Our office will verify your supporters, build your support system, and create into a personalized standard parole plan. Our standard parole plan is approved in ALL STATES where parole is available. Send SASE for a processing form. Service fee is \$125.00.

*Although the Prison system may only see Prison Numbers...*

*We see "Faces" with "Names" with "Loving families" – "We See People"!*

### D&D Worldwide Services, LLC

12337 Jones Rd # 408 Houston, TX 77070

P.O. Box 40081; Houston, TX 77240

Office: (281) 580-8844

Website: [www.myparole.info](http://www.myparole.info)

***Se Habla Español.***



# New Trial Granted in Jail Strip Search Case Following Jury Verdict; \$385,000 Settlement

by Matt Clarke

On March 7, 2011, an Iowa federal district court granted a motion for a new trial after a jury awarded \$259,155 to a woman who was improperly strip searched when she was arrested and booked into jail. Before another trial was held, a 2012 U.S. Supreme Court ruling changed the law regarding strip searches of jail detainees, and the case settled in February 2013 for more than the jury award.

Maureen Rattray was arrested in Sioux City, Iowa for operating a vehicle while intoxicated – her first offense – which was a serious misdemeanor in violation of Iowa Criminal Code § 321J.2. She was taken to the Woodbury County Jail. During booking, two female jailers strip searched her twice and conducted body cavity searches.

The first strip search took place in a room with an open door so men standing outside were able to look in. Rattray began to cry, and one of the jailers mocked her and then ripped off her halter top. Because she was confused about whether or not she was wearing a tampon, one of the jailers allegedly shoved her against a wall and performed a cavity search of her vagina. Rattray was then forced to walk unclothed down a hallway to the last cell, passing men who looked at

her while she attempted to cover her breasts and genitalia with a jail-issued jumpsuit that guards had not allowed her to put on.

Once in the cell, Rattray was placed on the bed and a jailer put a knee on her back while performing a second cavity search of her vagina and genital area, during which Rattray cried and screamed. Only then was she allowed to dress.

The strip and body cavity searches were performed in accordance with jail policy, which prohibited such searches for persons arrested for simple misdemeanors and scheduled (code section) violations if there was no probable cause to believe they were concealing a weapon or contraband, but required searches for persons arrested for any other offense.

Rattray and two other women who were subjected to strip searches at the Woodbury County Jail, Lisa Lambert and Lori Mathes, filed civil rights actions pursuant to 42 U.S.C. § 1983 against the county. Their cases, which were consolidated, alleged that the jail's policy of conducting strip and body cavity searches without reasonable suspicion violated the Fourth Amendment's prohibition against unreasonable searches and seizures.

The district court granted partial summary judgment to Rattray, finding that her Fourth Amendment rights had been violated by the strip and body cavity searches. The case then went to a jury trial on damages.

Initially, the jury awarded damages of \$5,000 for past emotional distress, \$500 for


future emotional distress, \$3,155 for past medical expenses, \$500 for future medical expenses and \$250,000 in nominal damages. This was contrary to the court's instruction not to award nominal damages unless no other damages were awarded, and in such case to only award \$1. The judge explained the error and had the jury deliberate again. After ten minutes, the jury returned with an award of \$250,000 for past emotional distress, \$5,500 for future emotional distress, \$3,155 for past medical expenses and \$500 for future medical expenses.

The judge entered the verdict but the county filed a motion for a new trial, citing irregularities in the jury's second damages award. The judge agreed that it was unable to ascertain why the jury awarded \$5,000 to Rattray for past emotional distress in the first verdict, then ten minutes later awarded her \$250,000 for past emotional distress in the second verdict. Because "it is impossible to determine what was on the jury's mind," the motion for a new trial was granted.

But before another trial was held, a 2012 decision by the U.S. Supreme Court found that every detainee, even those incarcerated on a non-indictable offense, who will be admitted to a jail's "general population" may be required to undergo a close visual inspection while undressed without reasonable suspicion that he or she may have contraband. See: *Florence v. Board of Chosen Freeholders of the County of Burlington*, 132 S.Ct. 1510 (2012).

Lambert and Mathes' cases had not yet gone to trial prior to the decision in *Flor-*

**PENACON.COM**  
Helping the incarcerated community  
gain connections around the world!  
  
Post your profile on an easy to  
navigate website for millions of  
viewers to see. Gain new  
penpals and look forward  
to receiving mail!  
  
One Year Ad Only \$35  
Until Release Date Ad \$95  
  
Request a form today!  
Send a S.A.S.E. to:  
Penacon.com  
P.O. Box 1037  
Edna, TX 77957  
  
USE CODE  
PLN5OFF  
FOR \$5 OFF

  
**chiang-lin.com**

**Law Office of  
TIMOTHY C. CHIANG-LIN, PLLC**  
  
Representing Individuals Sexually Abused  
in Washington State's Foster Care, Group Home,  
City, County Jail and Prison  
  
**2155 112th Ave NE, Bellevue, WA 98004**  
**tim@chiang-lin.com**



ence. Following the Supreme Court's ruling, county and jail officials filed motions for summary judgment, seeking dismissal of all three plaintiffs' claims. The district court held in a December 10, 2012 order that "summary judgment in favor of the County is appropriate on all of the plaintiffs' 'no reasonable suspicion' strip-search claims, in light of this [new] standard from *Florence*."

However, Rattray and Mathes had also objected to the "manner" in which the strip searches were conducted; consequently, the district court found that those claims could survive *Florence* – which did not articulate what manner of strip searches might be deemed overly invasive or objectionable – and set their cases for trial. The court entered summary judgment against Lambert.

Shortly before the new trial on Rattray and Mathes' remaining claims, the case settled in February 2013. According to one of the attorneys involved, the county settled with Rattray for \$335,000, with Mathes for \$40,000 and with Lambert (to forestall an appeal of the district court's summary judgment order) for \$10,000. See: *Rattray v. Woodbury County, Iowa*, U.S.D.C. (N.D. Iowa), Case No. 5:07-cv-04014-MWB. ■

## California: State Prisoner Cannot Serve Concurrent Sentence in County Jail

ON FEBRUARY 15, 2013, THE CALIFORNIA Court of Appeal held that when a sentence that otherwise would have been served in a county jail is ordered to run concurrent to a sentence already being served in state prison, the entire sentence must be served in prison.

In May 2011, Olivia S. Torres was sentenced to two years in state prison following burglary and forgery convictions in Tulare County.

On October 20, 2011, she pleaded guilty to receiving a stolen motor vehicle in Fresno County and stipulated to a two-year term to run concurrently with the sentence she was already serving. The trial court sentenced Torres to prison despite the fact that, under California's realignment statute, felons sentenced on or after October 1, 2011 now serve their sentences in county jail instead of prison. That statutory provision applies so long as a defendant is not disqualified by virtue of a current or prior "serious" or "violent"

felony conviction, and is not required to register as a sex offender – factors that did not apply to Torres.

The Court of Appeal held that sentencing a felon to state prison for one part of a sentence and to county jail for another part could result in needless confusion and potentially absurd consequences. The appellate court wrote that it would be contrary to legislative intent if Torres ended up serving all or most of her postrelease community supervision period in county jail, and affirmed the trial court's order that she serve her entire sentence in prison.

The Court of Appeal noted that the California legislature had subsequently passed a bill, Pen. Code, § 669, subd. (d), that provided "express statutory authority" for a concurrent county jail sentence to be served in state prison. See: *People v. Torres*, 213 Cal. App. 4th 1151 (Cal. App. 5th Dist. 2013). ■

## Stamps for CASH!

*Great Goods will buy your stamps!*

**70%** of Face Value: Complete books or sheets of Forever Stamps

**65%** of Face Value: Complete books, sheets, or rolls of 45-cent stamps

**60%** of Face Value: Complete books or sheets of high denomination stamps above 45-cent

**Payment sent within 24 hours of receipt.**

**WE WILL SEND** your funds as a money order, electronic payment to anywhere you designate. Great Goods can also send payment to an approved package vendor. Please provide complete name and address of where to send your funds. Also include any required forms or special instructions.

Minimum money order of \$20. • No quantity of stamps too big. • No taped or stapled stamps. • Used, damaged, torn stamps not accepted and cannot be returned. • Stamps **MUST** be on original postal backing. • Only new stamps accepted.

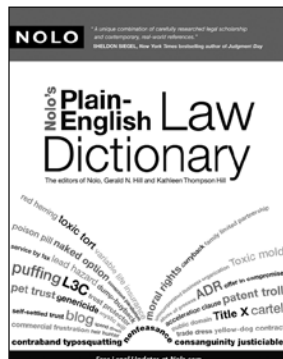
• No singles or partials will be accepted and they cannot be returned.

## GREAT GOODS

PO Box 399, West Chesterfield NH 03466

[www.greatgoods.org](http://www.greatgoods.org)

STAMPS © USPS. ALL RIGHTS RESERVED.



## Nolo's Plain-English Law Dictionary

\$29.99

Order from

### Prison Legal News

P.O. Box 1151

Lake Worth, FL 33460

561-360-2523

Add \$6 shipping for orders under \$50

[www.prisonlegalnews.org](http://www.prisonlegalnews.org)



## Save on Prescription Eyeglasses & Shades

Send for a **FREE** Catalog  
Money Back Guarantee

**Prism Optical, Inc.**  
10954 NW 7th Ave  
Dept: LN0114  
Miami, FL 33168

Inquiries from Friends  
and Family Welcome  
1-800-637-4104

[www.prismoptical.com](http://www.prismoptical.com)  
[contact@prismoptical.com](mailto:contact@prismoptical.com)



# Iowa: Bad Faith or Misconduct can Overcome Mental-Process Privilege in Disciplinary Case

**T**HE IOWA SUPREME COURT HAS HELD that administrative law judges (ALJs) in the Department of Corrections (DOC) are entitled to assert the mental-process privilege in an Office of Ombudsman investigation, but that privilege may be overcome upon a strong showing of bad faith or misconduct. In the case before the Court, the Ombudsman – a state watchdog agency – made the requisite showing to overcome the privilege.

Fort Dodge Correctional Facility prisoner Randy Linderman was charged with several disciplinary offenses on April 2, 2008, including Class B assault. He was “verbally disruptive and physically inappropriate with [a guard] to the point that the offender assaulted the officer with his body several times.” Specifically, Linderman chest bumped the guard two or three times and disobeyed commands until other guards arrived to take control.

At his disciplinary hearing, Linderman pleaded guilty and admitted he was angry at the time of the violation. ALJ Deb Edwards found him guilty of Class B assault and imposed a sanction of 180 days in disciplinary detention and 180 days loss of earned time. Linderman appealed to the warden, who affirmed Edwards’ decision. Rather than seek post-conviction judicial review, Linderman complained to the Office of Ombudsman.

During its investigation, the Ombudsman learned that Warden Cornell Smith had sent the ALJ an email which stated, “Please exercise sanctions to fit situation (180-365).” A Class B assault only carries a 90-day sanction, and the penalty imposed on Linderman was for a Class A assault. To increase the penalty, the ALJ must find aggravating circumstances by listing six factors from a nonexclusive list. None of the factors was expressly identified in Linderman’s disciplinary decision, nor were any of them present with respect to his offense.

An interview by a representative from the Ombudsman’s office found that ALJ Edwards stated she decided not to find aggravating factors for Linderman, but Warden Smith claimed Edwards had said she planned to do so. Subsequently, Edwards amended Linderman’s disciplinary decision to reflect that it was a Class A offense, but

failed to list any aggravating factors.

The Ombudsman sought to depose Edwards about her “[m]otive, influences, and decision process” in the case. The DOC and Edwards objected, and the Ombudsman sought to enforce its subpoena by filing a petition in Polk County District Court in October 2010. The court held that the mental-process privilege did not apply to Ombudsman proceedings and granted summary judgment in favor of the Ombudsman’s office.

On appeal, the Iowa Supreme Court agreed with the outcome but not the district court’s finding that the mental-process privilege was inapplicable. The Court stated, “The mental-process privilege is a corollary to the deliberative process privilege that protects uncommunicated motivations for a policy or decision.” ALJs serve in a quasi-judicial role in disciplinary hearings and are entitled to mental-process privilege “absent a strong showing of bad faith or improper behavior sufficient to overcome that privilege.”

In this case, the ex parte communication from the warden, who hears prisoners’ disciplinary appeals and cannot increase the sanction on appeal, to the ALJ, whose independence from the DOC is statutorily mandated, exhibited improper conduct sufficient to overcome the mental-process privilege.

Therefore, the Ombudsman could compel testimony not only as to the ALJ’s “communications with the warden and others, but also regarding her thought processes to explain her decision in Linderman’s disciplinary proceedings.” Justice Bruce Zager issued a dissenting opinion. See: *Office of Citizens’ Aide/Ombudsman v. Edwards*, 825 N.W.2d 8 (Iowa 2012).

During a January 2014 phone interview, Ombudsman Ruth H. Cooperrider informed *PLN* that her office was able to depose Edwards upon remand, and that the investigation had concluded but a final report had not yet been released.

Edwards retired from her ALJ position with the DOC in June 2010, while the Ombudsman’s investigation was pending. ■

Additional source: [www.messengernews.net](http://www.messengernews.net)

# Prisoner Assaulted in Tennessee Jail Settles Suit for \$530,000

by Derek Gilna

CURTIS DRESSMAN, A FORMER PRE-TRIAL detainee, has settled his § 1983 lawsuit against jail officials in Nashville, Tennessee after a judge denied the jail's motions for summary judgment. The district court found that Dressman had "a clearly established constitutional right to be [free] from deliberate indifference of inmate-on-inmate violence."

The court's November 27, 2012 order cited a culture of "deliberate indifference" by various jail officials with respect to prisoner safety at the Davidson County Criminal Justice Center. This, the court said, fostered a "fight club" atmosphere in the facility's booking and intake areas when non-violent pre-trial detainees were placed in the same cell as violent prisoners despite the availability of other, vacant holding cells.

The district court brushed aside assertions by jail officials that the April 2010 assault on Dressman by another intoxicated prisoner was an isolated incident, noting Dressman's assertion in his complaint that

"offender/offender assaults" occurred "almost one per day." Dressman claimed that he suffered a "traumatic brain injury, dental and facial fractures, cuts, and permanent physical injuries and disfigurement, as a result of the attack."

The court found that the jail was "on notice at the time of the assault that [it] had an obligation to protect detainees from this violence." The district court noted, "In a recent case of inmate-on-inmate sexual abuse at a Michigan jail where inmates were held in a 12-person unit, the Sixth Circuit made clear that 'the constitutional right to be free from deliberate indifference to assault ... was clearly established.'" See: *Bishop v. Hackel*, 636 F.3d 757 (6th Cir. 2011) [PLN, April 2012, p.45].

The district court further wrote that "On several occasions, we have held that 'deliberate indifference' of constitutional magnitude may occur when prison guards fail to protect one inmate from an attack by another..." citing *Walker v. Norris*, 917

F.2d 1449 (6th Cir. 1990).

In denying the jail's motions for summary judgment, the court held that Dressman had adequately argued that there were empty holding cells available at the time of the assault, despite jail officials' assertions to the contrary. The court also said the jail's own records revealed a high level of prisoner-on-prisoner assaults during the previous year, including "thirty-four reported incidents of such assaults in the intake ... area in the four years before the incident at issue here," which was sufficient to substantiate Dressman's claims for the purposes of the summary judgment motions.

Following the district court's order, the case settled for \$530,000, inclusive of attorney's fees and costs, in July 2013. Dressman was represented by Nashville attorney Edmund J. Schmidt III. See: *Dressman v. Metropolitan Government of Nashville and Davidson County*, U.S.D.C. (M.D. Tenn.), Case No. 3:11-cv-00336; 2012 U.S. Dist. LEXIS 167640. ■

## INMATE TOLL BUSTERS

### Discount Inmate Telephone Calling Services

*Serving: Federal & State Prisons, County Jails and INS Detention Centers Nationwide*

**FREE Same Day Installation, Only \$1.25 Per Month and 6¢ Per Minute**

### PAY ONLY FOR MINUTES YOU USE

**[www.InmateTollBusters.com](http://www.InmateTollBusters.com)**

**Call 24 Hours: 888-966-8655**

We Send Calls To Cell Phones.  
International Call Services Available.  
Call For Rates. Se Habla Español.



## **Arrested: What to do When Your Loved One's in Jail, by Wes Denham (Chicago Review Press, 2010). 263 pages (paperback), \$16.95.**

*Book review by John E. Dannenberg*

**A**RRRESTED: WHAT TO DO WHEN YOUR Loved One's in Jail is a detailed "how-to" manual for educating the uninformed about the harsh realities of what jail entails, with the ultimate goal being to guide family members as to 1) whether they should bother to try to help their loved one who's in the pokey, and 2) if so, how to best accomplish such assistance.

Author Wes Denham speaks from years of experience; he is a private investigator, often hired by families who want to aid an incarcerated loved one. Denham is cynical of both the system as well as the motives of prisoners who mainly want to get out of jail. *Arrested* is an incredibly insightful and pragmatic treatise for the outsider trying to cope with the ugly realities of jails, guards and prisoners. The book's 27 chapters are written in a blatantly sincere style that minces no words, often spiked with humorous cynicism. It could be described as a fun read were its subject matter not so serious and visceral.

*Arrested* steels the reader who is faced with the difficult decision of offering immediate financial help in response to an unexpected call in the middle of the night, announcing that their loved one has been jailed. They call asking for help in posting bail; they want commissary money put on their books; they want family members to make illicit phone calls for them; they seek visits; they need funds to hire the best attorney.

But the reality of the situation, per the well-informed author of *Arrested*, requires a measured response. For example, perhaps they are plainly guilty and just need a public defender to make a plea deal for them. Maybe they are desperate to survive and will use known information they remember – such as your bank account or Social Security number – as collateral in jail to pay unscrupulous drug dealers or commissary scalpers. *Arrested* goes into excruciating detail as to the types of scams you must suddenly be prepared to defend against; it is an incredible eye-opener into the ugly realities of jail life.

As Denham relates, one must first and foremost make a realistic determination with respect to what good, if any, will come

from responding to an incarcerated loved one's urgent request for assistance. Is bail even available for the charges? Will he or she jump bail, leaving you to forfeit your home to the bail bond company? If they are released on bail for one charge, will they be rearrested upon release for another pending charge, resulting in instant bail forfeiture? Getting more personal, does the arrestee have a drug addiction that he is trying to maintain in jail by buying yet more drugs from other prisoners? Does he suffer from health problems that need immediate attention in the jail's typically abysmal medical system? Is he likely to be sexually victimized by other prisoners or guards? How can you get help by

interceding on his behalf?

To comprehend how to analyze all of these variables, *Arrested* supplies the reader with sample forms with checkboxes that can be used to make rational decisions. Skull and crossbones flags are used as headers for warnings that should be carefully read. Perhaps the most unfortunate aspect of *Arrested* is that not enough people will read it *before* needing to know the sound advice presented in its 263 pages. Alternatively, *Arrested* will give the sociologically curious a truly distasteful vision of the seedy nature of America's jails.

*Arrested: What to do When Your Loved One's in Jail* is available in PLN's bookstore; see page 62 in this issue. ■

## **California: Sexually Violent Predator Entitled to Jury Trial on Petition Seeking Conditional Release**

**T**HE CALIFORNIA COURT OF APPEAL has reversed the denial of a petition for conditional release filed by a sexually violent predator (SVP) who had received a psychological evaluation indicating that conditional release would be in his best interest and consistent with public safety.

As an SVP committed for indeterminate treatment, Michael James Smith was examined annually pursuant to section 6605 of the Sexually Violent Predator Act (SVPA), Welf. & Inst. Code § 6600 *et seq.*, to determine whether he should remain classified as an SVP. In July 2009, Smith received an evaluation recommending his conditional release. The following year he received an evaluation opining that he was "no longer an SVP and was entitled to unconditional release."

After receiving the initial favorable evaluation in 2009, Smith filed a petition for conditional release which he later supplemented with a copy of his even more favorable 2010 evaluation. The trial court denied the petition, finding that Smith failed to carry his burden of proof.

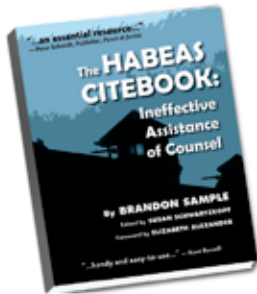
On appeal, Smith argued that the trial court had erroneously placed the burden of proof on him. The Court of Appeal agreed,

holding that under the SVPA, as amended by Proposition 83 in 2006, if the mental condition of a committed person is found to have improved to the point that he or she can either be unconditionally discharged or conditionally released to a community-based program without endangering the public, and the person petitions for the recommended relief, the state bears the burden of proof in a trial at which the person has the right to demand a jury. Prior to the 2006 amendments, by contrast, the allocation of the burden of proof differed depending on whether conditional or unconditional release was sought.

The appellate court also found that Smith's counsel provided ineffective assistance by failing to request a hearing under section 6605 rather than section 6608, as only the former statute provides for a jury trial. "[T]here could be no acceptable tactical reason for failing to seek relief under section 6605 in preference to section 6608," the Court of Appeal wrote.

The trial court's order was therefore reversed and the case remanded for further proceedings. See: *People v. Smith*, 212 Cal. App. 4th 1394 (Cal. App. 1st Dist. 2013). ■





## The Habeas Citebook: Ineffective Assistance of Counsel

**\$49.95**

Brandon Sample

ISBN: 978-0-9819385-1-6

Paperback, 224 pages

The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an invaluable resource that identifies hundreds of cases where the federal courts have granted habeas relief to prisoners whose attorneys provided ineffective assistance of counsel.



## Prisoners' Guerrilla Handbook to Correspondence Programs in the United States and Canada, 3rd Edition

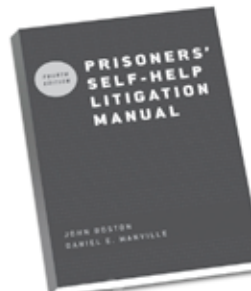
**\$49.95**

Jon Marc Taylor

ISBN: 978-0-9819385-0-9

Paperback, 224 Pages

The greatly anticipated and newly updated third edition of the Prisoner's Guerrilla Handbook to Correspondence Programs in the United States and Canada has finally arrived! Author Jon Marc Taylor's brand new version is the latest in this unique and highly successful guidebook for the prisoner-student. This invaluable tool and how-to handbook provides the reader with step-by-step instructions to find the appropriate education program for correspondence high school, vocational, paralegal, undergraduate, and graduate courses offered in the U.S. and Canada today.



## Prisoners' Self-Help Litigation Manual, 4th Edition

**\$45.95**

John Boston & Dan Manville

ISBN: 978-0-1953744-0-7

Paperback, 960 pages

Prisoners' Self-Help Litigation Manual, in its much-anticipated fourth edition, is an indispensable guide for prisoner litigants and prisoner advocates seeking to understand the rights guaranteed to prisoners by law and how to protect those rights. Clear, comprehensive, practical advice provides prisoners with everything they need to know on conditions of confinement, civil liberties in prison, procedural due process, the legal system, how to actually litigate, conducting effective legal research, and writing legal documents. It is a roadmap on how to win lawsuits.

- ☐ Habeas Citebook,  
Ineffective Assistance of Counsel  
\$49.95
- ☐ Prisoners' Guerrilla Guide to  
Correspondence Programs  
3rd edition  
\$49.95
- ☐ Prisoners' Self-Help  
Litigation Manual  
4th edition  
\$45.95

**Shipping included in all prices**

**Order by mail, phone, or on-line.** Amount enclosed \_\_\_\_\_

By: ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_ ZIP \_\_\_\_\_

PUBLISHED BY

**PRISON LEGAL NEWS**  
Dedicated to Protecting Human Rights

PO Box 1151 • Lake Worth, FL 33460  
Tel 561-360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

# Qualified Immunity Denied to Prison Psychiatrist who Prescribed Lethal Drug Combination; \$450,000 Settlement

**T**HE SIXTH CIRCUIT COURT OF APPEALS has affirmed the denial of qualified immunity to a psychiatrist in a lawsuit brought by a prisoner's estate. The appellate court found the evidence could establish that the psychiatrist had "consciously exposed" the prisoner "to a substantial risk of death through his medical treatment without so much as a warning." The case settled for \$450,000 following remand.

When Scott Quigley, Jr., 23, was transferred from a Michigan Department of Corrections (MDOC) facility to the Charles Egeler Reception and Guidance Center in February 2008, he came under the medical supervision and care of Correctional Medical Services, the MDOC's private contractor.

The day after Quigley arrived at the guidance center, physician's assistant Steven Garver conducted a physical exam and prescribed 50mg of Amitriptyline (brand name Elavil) once a day, which was double Quigley's previous prescription. A few weeks later, on March 7, 2008, Dr. Tuong V. Thai, a psychiatrist, completed a comprehensive psychiatric assessment; Quigley's current prescription was discussed, as was adding the medication Trazodone (brand name Desyrel).

Dr. Thai prescribed 100mg of Trazodone once a day for four weeks. Three days later, Quigley was found dead in his cell. Prison charts confirmed that he had received both Amitriptyline and Trazodone during the previous three days; the cause of his death was not clearly established. In a "battle of experts," Quigley's estate submitted expert testimony that he had suffered a fatal drug interaction resulting in serotonin syndrome, while Thai's experts claimed Quigley's death was due to an epileptic seizure.

The district court denied Dr. Thai's motion for summary judgment, in which he argued he was entitled to qualified immunity. The court found there was sufficient evidence to conclude that Quigley likely died as a result of the treatment he received for depression, and that treatment which kills an otherwise healthy 23-year-old constitutes a "substantial risk of harm warranting constitutional protection."

The Sixth Circuit agreed, holding that Quigley's estate had satisfied the objective

component of an Eighth Amendment deliberate indifference claim by demonstrating his medical need was "sufficiently serious." Turning to the subjective component – that Dr. Thai could infer a substantial risk to Quigley and had disregarded that risk – the appellate court held a reasonable fact finder could find for the estate on that point.

The record showed that "it is well known in the psychiatric profession that a tetracyclic like Trazodone should not be administered in conjunction with a tricyclic like Amitriptyline because the drugs exponentially increase the potency of one another, 'lead to toxic levels and are deadly.'" Thai's notes indicated he had discussed with Quigley his Amitriptyline prescription and explained the side effects of Trazodone, but did not advise him to not take both simultaneously or inform medical staff to not dispense both drugs.

Finally, the Court of Appeals found

the right at issue was clearly established. "Obviously, if a doctor knows that his actions could kill a prisoner and takes those actions anyway without even advising of the risk, that amounts to more than a reasonable mistake in medical judgment," the Court wrote. In sum, a doctor may not consciously expose a patient "to an excessive risk of serious harm."

The Sixth Circuit affirmed the district court's denial of qualified immunity. It also affirmed a state law gross negligence claim, as it was similar to the subjective component of the Eighth Amendment claim. See: *Quigley v. Thai*, 707 F.3d 675 (6th Cir. 2013).

Following remand, the case settled in October 2013 for a total of \$450,000. Of that amount, \$171,705.94 went towards attorneys' fees and costs, and the balance of \$278,294.06 went to Quigley's mother and the personal representative of his estate. ■

## Medical Parole for Texas Prisoners on the Decline

by Matt Clarke

**T**HE NUMBER OF PRISONERS GRANTED medical parole in Texas decreased in fiscal year 2012 compared with those paroled due to medical reasons in the previous two years. The Texas Board of Pardons and Paroles approved just 72 prisoners for medical parole in FY 2012, down from 100 in FY 2011 and 102 in FY 2010.

Although medical parole – officially called Medically Recommended Intensive Supervision – may be insignificant in terms of reducing Texas' prison population, it can have a much greater effect on the amount of money spent on prisoners' health care. Medical parole can also relieve the strain on the limited number of prison hospital beds available – about 300 statewide for a prison population of 150,000 that is growing older each year, and thus in need of more medical treatment.

"It's becoming an issue for the state and the [criminal justice] department," said Dr. Owen Murray, vice president for prisoner health care at the University of Texas Medical Branch, which provides medical services

for over two-thirds of Texas prisoners. "We have been very vigilant about doing everything we can to look after these patients. The parole board is in a difficult spot. [Besides costs] they really have to look out for public safety. I don't envy their job, trying to balance those two things."

Parole officials, however, have denied they take costs into account when deciding whether to grant parole based on medical reasons.

"The medical care cost is not included in the information sent to the board," said Rissie L. Owens, chairwoman of the Board of Pardons and Paroles (BPP). "The [BPP] makes a determination based on the inmate's medical condition and medical evaluation and if he will be a threat to public safety," she stated. "Along with the nature of the inmate's crimes and ability to carry out future criminal activity, the board looks at things like the prisoner's degree of mobility, assistance needed for daily living, cognitive condition and expected life expectancy."

According to state records, the ten

Texas prisoners with the most expensive medical conditions cost the state almost \$2 million in 2011 alone. While prisoners over the age of 55 make up just 8% of Texas' prison population, they account for 30% of the prison system's medical expenses.

The vast majority of medical parole applications are denied. In FY 2012, for example, the BPP screened 1,857 applications, of which 491 were presented to parole officials and 72 were granted – an approval rate of 3.8%. Some prisoners have died while their applications were pending.

Most medical parolees are simply sent home to die; 68.1% of prisoners paroled due to medical reasons in FY 2012 were terminally ill, while 29.2% needed long-term care. From December 1, 1991 through the end of FY 2012, around 1,480 prisoners were released on medical parole. Of those, 986 (66%) have died, 268 finished their sentences, 121 remain on parole supervision and 67 (4.5%) returned to prison.

The nature of a prisoner's offense is not considered by the doctors who recommend medical parole. "We don't know what their crimes are; we just submit them based on their medical criteria," Murray said.

Rather, the nature of a prisoner's offense is taken into account when the BPP reviews the application for medical parole. At that point the district attorney (DA) for the sentencing jurisdiction is notified and allowed to provide input. Due to federal medical privacy laws, however, the DA is not informed of the nature of the prisoner's health condition. This has led some prosecutors, such as Tarrant County DA Joe Shannon, Jr., to oppose all medical parole requests.

"Do they have a sore throat or a hang-nail, or are they dying of cancer?" asked Shannon. "I'm not going to release someone for intensive medical treatment if I don't know why they are being treated. I'm not going to overturn a jury verdict or plea of guilty without any information at all.... I don't know what they need that cannot be provided inside the prison."

Of course, a serious, debilitating and usually life-threatening condition is a prerequisite to even apply for medical parole, and prisoners aren't paroled to get better treatment but rather because their medical condition makes it unlikely they will pose a threat to public safety. Once released, they

may qualify for health care services through Medicaid or Medicare.

Regardless, some are still critical of the medical parole process.

"The state government through the Board of Pardons and Paroles appears to be playing a shell game or hot potato by shifting the cost of inmate care to the county and the federal government," said former Harris County assistant DA Kim Ogg. "It sounds like an austerity measure taken by the state at the expense of crime victims."

In January 2013, state Rep. Senfronia Thompson introduced HB 512, which would remove certain eligibility restrictions for prisoners who apply for medical parole – including restrictions on prisoners convicted of violent crimes and sex offenses – but would also limit the types of conditions for which medical parole is available. The bill died in the House Committee on Corrections. Legislation containing similar provisions, SB 991, was passed by the Senate but died in committee in May 2013. ■

Sources: *Texas Tribune*, *Fort Worth Star-Telegram*, [www.tdcj.state.tx.us/bpp](http://www.tdcj.state.tx.us/bpp), <http://gritsforbreakfast.blogspot.com>

## Great Self-Help Book Deals From Prison Legal News!



### Order from Prison Legal News

Add \$6 shipping for orders under \$50

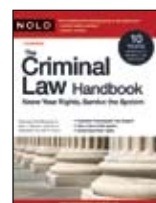
Prison Legal News  
PO Box 1151  
Lake Worth, FL 33460  
Phone: 561-360-2523  
[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

### How to Win Your Personal Injury Claim

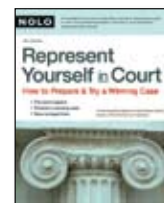
\$34.99

*How to Win Your Personal Injury Claim* shows you how to handle almost every accident situation, and guides you through the insurance claim process, step by step. Learn how to:

- protect your rights after an accident
- determine what your claim is worth
- handle a property-damage claim
- deal with uncooperative doctors, lawyers and insurance companies
- counter the special tactics insurance companies use
- prepare a claim for compensation
- negotiate a full and fair settlement
- stay on top of your case if you hire a lawyer



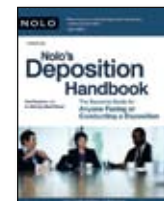
The Criminal Law Handbook  
\$39.99



Represent Yourself in Court  
\$39.99



Legal Research  
\$49.99



Nolo's Deposition Handbook  
\$34.99

NOLO  
YOUR LEGAL COMPANION



# Court Employee Fired for Helping Wrongfully Convicted Prisoner Prove His Innocence

by Christopher Zoukis

IN 1984, ROBERT E. NELSON WAS CONVICTED and sentenced by Jackson County, Missouri Circuit Court Judge David M. Byrn to 50 years in prison for forcible rape, 5 years for forcible sodomy and 15 years for first-degree robbery, plus two unrelated robbery convictions. Nelson's sentence for the latter two convictions ended in 2006, leaving him serving time for the remaining robbery and sexual offenses.

In August 2009, Nelson petitioned Judge Byrn for post-conviction DNA testing which was not available at his trial 25 years earlier. That request, and a second request in October 2011, were both denied because Nelson had cited a state statute that was not expansive enough to allow for his DNA to be tested. Following the second denial, Judge Byrn's administrative assistant, 70-year-old great-grandmother Sharon Snyder, took pity on Nelson. Snyder located a DNA testing motion that had been granted in another case – a public document freely available to those who knew where to look – and provided it to Nelson's sister to pass along.

Nelson used the successful motion as a guide and petitioned the court for DNA testing a third time on February 22, 2012. His motion was granted, he was found to be indigent and Midwest Innocence Project legal director Laura O'Sullivan was appointed to represent him. The Kansas City Police Department's crime lab tested evidence from the crime scene and found it did not match Nelson's DNA, though it did match two other suspects. Nelson was released from prison on June 12, 2013 upon the joint request of prosecutors and the Midwest Innocence Project, after serving three decades – mostly on the unrelated robbery convictions. Both of his parents had died while he was incarcerated.

"If we had not found this mistake that occurred, it's likely he would have served out the rest of his sentence, and the real perpetrators would not have been identified," said Jackson County Prosecutor Jean Peters Baker. "This is a day that justice is being served."

Five days after Nelson's release from prison, justice was not served when Snyder

was suspended by Court Administrator Jeffrey Eisenbeis for providing the DNA testing motion that eventually resulted in Nelson's wrongful conviction being overturned. Judge Byrn fired Snyder on June 27, 2013, calling her decision to give the motion to Nelson's sister "clearly improper" and a violation of Canon Seven of the court's code of ethics, which prohibits court employees from giving legal advice.

Snyder, who had planned to retire in nine months, at first was alarmed that she would lose her pension. "[A]ll I could do was curl up in a fetal position and cry," she stated. After learning that her pension was

safe, she said she felt she was on strong moral ground.

"I lent an ear to his sister, and maybe I did wrong.... But if it was my brother, I would go to every resource I could possibly find" to help him, she said. "I think that the law should be changed, that judges should be taken out of the mix on deciding these DNA motions, and they should automatically be granted." ■

Sources: *Associated Press*, [www.businessinsider.com](http://www.businessinsider.com), [www.desertnews.com](http://www.desertnews.com), [www.buffingtonpost.com](http://www.buffingtonpost.com), [www.theverge.com](http://www.theverge.com), [www.kansascity.com](http://www.kansascity.com)

## NY Prisoner's Youthful Age Considered in Modifying Prison Disciplinary Sanction

THE APPELLATE DIVISION OF NEW YORK'S Supreme Court, Fourth Judicial Division, after taking into account a prisoner's youthfulness, modified the penalty imposed in a prison disciplinary hearing.

Prisoner Paul Cookhorne was charged with violating various prison rules that included assaulting and injuring a guard. Cookhorne, who was 17 years old at the time of the violations, was found guilty at a tier III disciplinary hearing and ordered to serve four years in the Special Housing Unit (SHU) and lose four years of good time, among various other sanctions.

Cookhorne filed a "hybrid CPLR article 78 proceeding and declaratory judgment action" challenging the guilt determination and punishment imposed. He also sought a declaration that prison officials consider the age of 16- and 17-year-olds as a mitigating factor in all disciplinary proceedings. By order of the Erie County Supreme Court, the case was transferred to the Appellate Division.

The appellate court severed the causes of action and transferred the part seeking declaratory judgment back to the Supreme Court for further proceedings. The Appellate Division then ruled on Cookhorne's claims seeking relief under CPLR article 78. Initially, the court found that the disciplinary report, testimony of the guard

and photographic evidence constituted substantial evidence that Cookhorne had violated prison rules.

As to the punishment imposed, the appellate court held that the sanctions were "so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness." Taking into consideration Cookhorne's young age at the time, all of the circumstances surrounding the incident and the New York State Department of Corrections' disciplinary guidelines, the court concluded the maximum penalty that should have been imposed was 18 months in the SHU plus the loss of 18 months' good time credits and loss of phone, commissary and package privileges for the same period of time.

Therefore, the Appellate Division ordered Cookhorne's disciplinary sanction to be so modified, and wrote that nothing in its order should be construed to limit the scope of issues or relief in the declaratory judgment action pending before the lower court. See: *Cookhorne v. Fischer*, 960 N.Y.S.2d 798, 104 A.D.3d 1197 (N.Y. App. Div. 4th Dep't 2013). ■

### Dictionary of the Law

Thousands of clear, concise definitions.  
See page 61 for ordering information.





Stay in touch with a good Magazine!

# Get 5 Full One Year Subscriptions - **ONLY \$20!**

+ \$3.99 p/h  
"BEST DEAL ON THE POUND!"

Check your **5** magazines  
and underline three backup choices (in case of unavailability)

- |                                                             |                                                            |                                                        |
|-------------------------------------------------------------|------------------------------------------------------------|--------------------------------------------------------|
| <input type="checkbox"/> 4 WHEEL DRIVE & SPORT UTILITY (12) | <input type="checkbox"/> FLEX (12)                         | <input type="checkbox"/> PLANE & PILOT (12) NR*        |
| <input type="checkbox"/> ALLURE (12)                        | <input type="checkbox"/> FLORIDA SPORT FISHING (6)         | <input type="checkbox"/> POPULAR PHOTOGRAPHY (12)      |
| <input type="checkbox"/> AMERICAN PHOTO (6)                 | <input type="checkbox"/> FLYING (12)                       | <input type="checkbox"/> POPULAR SCIENCE (12)          |
| <input type="checkbox"/> ARTHRITIS TODAY (6)                | <input type="checkbox"/> FOUR WHEEL & OFF ROAD (12)        | <input type="checkbox"/> PREDATOR EXTREME (6)          |
| <input type="checkbox"/> AUTOMOBILE (12)                    | <input type="checkbox"/> FOUR WHEELER (12)                 | <input type="checkbox"/> PREVENTION (12)               |
| <input type="checkbox"/> BACKPACKER (9)                     | <input type="checkbox"/> FREESKIER (6)                     | <input type="checkbox"/> RED BULLETIN MAGAZINE (12)    |
| <input type="checkbox"/> BETTER HOMES & GARDENS (12)        | <input type="checkbox"/> GLAMOUR (12)                      | <input type="checkbox"/> REDBOOK (12)                  |
| <input type="checkbox"/> BICYCLING (11)                     | <input type="checkbox"/> GOLF DIGEST (12)                  | <input type="checkbox"/> ROAD & TRACK (10)             |
| <input type="checkbox"/> BLACK ENTERPRISE (12)              | <input type="checkbox"/> GOLF TIPS (7)                     | <input type="checkbox"/> SAVEUR (9)                    |
| <input type="checkbox"/> BOATING (10)                       | <input type="checkbox"/> GOLFWEEK (40)                     | <input type="checkbox"/> PARENT & CHILD (8)            |
| <input type="checkbox"/> BON APPETIT (12)                   | <input type="checkbox"/> HARPERS BAZAAR (10)               | <input type="checkbox"/> SELF (12)                     |
| <input type="checkbox"/> BOWHUNT AMERICA (6)                | <input type="checkbox"/> HOT BIKE (12)                     | <input type="checkbox"/> SEVENTEEN (10)                |
| <input type="checkbox"/> BOWHUNTING WORLD (9)               | <input type="checkbox"/> HOT ROD (12)                      | <input type="checkbox"/> SHAPE (12)                    |
| <input type="checkbox"/> BRIDAL GUIDE (6)                   | <input type="checkbox"/> HOUR DETROIT (12)                 | <input type="checkbox"/> SIEMPRE MUJER (6)             |
| <input type="checkbox"/> CABELA'S OUTFITTER JOURNAL (6)     | <input type="checkbox"/> HOUSE BEAUTIFUL (10)              | <input type="checkbox"/> SKI MAGAZINE (6)              |
| <input type="checkbox"/> CAR & DRIVER (12)                  | <input type="checkbox"/> INC (12)                          | <input type="checkbox"/> SLAM (10)                     |
| <input type="checkbox"/> CAR CRAFT (12)                     | <input type="checkbox"/> INSTRUCTOR K - 8 (6)              | <input type="checkbox"/> SNOWBOARD (4)                 |
| <input type="checkbox"/> CBS WATCH! MAGAZINE (6)            | <input type="checkbox"/> ISLANDS MAGAZINE (8)              | <input type="checkbox"/> SNOWBOARDER (6)               |
| <input type="checkbox"/> CHARISMA (12)                      | <input type="checkbox"/> JET (20)                          | <input type="checkbox"/> SPORT RIDER (10)              |
| <input type="checkbox"/> CHEVY HIGH PERFORMANCE (12)        | <input type="checkbox"/> LADIES HOME JOURNAL (10)          | <input type="checkbox"/> SUPER CHEVY (12)              |
| <input type="checkbox"/> CIRCLE TRACK (12)                  | <input type="checkbox"/> LATINA (10)                       | <input type="checkbox"/> SURFER (12)                   |
| <input type="checkbox"/> COMPLEX MAGAZINE (6)               | <input type="checkbox"/> LOG HOME LIVING (9)               | <input type="checkbox"/> TAMPA BAY MAGAZINE (6)        |
| <input type="checkbox"/> CONDE NAST TRAVELER (12)           | <input type="checkbox"/> LUCKY (10)                        | <input type="checkbox"/> TEEN VOGUE (10)               |
| <input type="checkbox"/> CRUISING WORLD (12)                | <input type="checkbox"/> MARIE CLAIRE (12)                 | <input type="checkbox"/> TENNIS (6)                    |
| <input type="checkbox"/> CYCLE WORLD (12)                   | <input type="checkbox"/> MEN'S FITNESS (10)                | <input type="checkbox"/> THE ATLANTIC MONTHLY (10)     |
| <input type="checkbox"/> DETAILS - FASHION (10)             | <input type="checkbox"/> MEN'S JOURNAL (12)                | <input type="checkbox"/> TIMBER HOME LIVING (6)        |
| <input type="checkbox"/> DETROIT HOME (6)                   | <input type="checkbox"/> MIDWEST LIVING (6)                | <input type="checkbox"/> TRANSWORLD MOTOCROSS (12)     |
| <input type="checkbox"/> DIGITAL PHOTO (7)                  | <input type="checkbox"/> MINISTRY TODAY (6)                | <input type="checkbox"/> TRANSWORLD SKATEBOARDING (12) |
| <input type="checkbox"/> DIRT RIDER (12)                    | <input type="checkbox"/> MORE (10)                         | <input type="checkbox"/> TRANSWORLD SNOWBOARDING (8)   |
| <input type="checkbox"/> EBONY (11)                         | <input type="checkbox"/> MOTOR TREND (12)                  | <input type="checkbox"/> TRUCKIN (13)                  |
| <input type="checkbox"/> ELLE DECOR (10)                    | <input type="checkbox"/> MOTORCYCLIST (12)                 | <input type="checkbox"/> UPTOWN (6)                    |
| <input type="checkbox"/> ENTREPRENEUR (12)                  | <input type="checkbox"/> MUSCLE & FITNESS (12)             | <input type="checkbox"/> UPTOWN MAGAZINE (6)           |
| <input type="checkbox"/> ESPN MAGAZINE (26)                 | <input type="checkbox"/> MUSCLE MUSTANGS & FAST FORDS (12) | <input type="checkbox"/> W MAGAZINE (10)               |
| <input type="checkbox"/> ESQUIRE (11)                       | <input type="checkbox"/> NYLON GUYS (6)                    | <input type="checkbox"/> WATERFOWL & RETRIEVER (2)     |
| <input type="checkbox"/> EVERY DAY WITH RACHAEL RAY (10)    | <input type="checkbox"/> NYLON MAGAZINE (10)               | <input type="checkbox"/> WEIGHT WATCHERS (6)           |
| <input type="checkbox"/> FAMILY CIRCLE (12)                 | <input type="checkbox"/> OLD HOUSE JOURNAL (6)             | <input type="checkbox"/> WHITETAIL JOURNAL (6)         |
| <input type="checkbox"/> FAMILY FUN (10)                    | <input type="checkbox"/> OUTDOOR LIFE (12)                 | <input type="checkbox"/> WIRED (12)                    |
| <input type="checkbox"/> FAST COMPANY (10)                  | <input type="checkbox"/> OUTDOOR PHOTOGRAPHER (11) NR*     | <input type="checkbox"/> WORKING MOTHER (6)            |
| <input type="checkbox"/> FIELD & STREAM (12)                | <input type="checkbox"/> OUTSIDE (12)                      | <input type="checkbox"/> YOGA JOURNAL (9)              |
| <input type="checkbox"/> FITNESS (10)                       | <input type="checkbox"/> PARENTS (12)                      |                                                        |

Send as many "5 for \$20" orders as you like!

*"Tell your Friends and Families!"*

Send a copy of this page to us. Please make your address as short as possible. **Current customers - Please update your address!**  
Allow 6-8 weeks for delivery. Pay by check, money order or **order online** and use credit card or PayPal.

Name and Inmate # (please print, maximum 24 characters):													
Address:													
City:						State:				Zip:			

\* No Renewal



## Inmate Magazine Service

P.O. Box 2063, Fort Walton Beach, FL 32549 [www.InmateMagazineService.com](http://www.InmateMagazineService.com)

OK to Copy!

## Eighth Circuit: No Qualified Immunity for Excessive Use of Force, Retaliation

THE EIGHTH CIRCUIT COURT OF APPEALS has affirmed a district court's denial of qualified immunity on a prisoner's retaliation and excessive force claims.

On July 26, 2008, Missouri prisoner Victor Santiago faced administrative segregation for failing to report to his work assignment at the Potosi Correctional Center. When he allegedly became combative, several guards pepper sprayed and handcuffed him, then slammed him into a wall and the floor. A guard "tightened the handcuffs to the 'crushing point.'" When Santiago claimed his wrist was broken, a nurse allegedly said "it don't look broke to me," and walked away. He was not allowed to wash off the pepper spray for about 35 minutes.

After Santiago filed an excessive force grievance, guard Shannon Clubbs and Lieutenant Daniel Blair allegedly retaliated against him and attempted to chill his use of the grievance process by making death threats and moving him to a cell with worse living conditions, including no personal property, bedding or running water, and a non-working toilet.

Santiago filed suit in federal court in 2009, alleging excessive force, deliberate indifference and retaliation. The district court granted summary judgment to the defendants on Santiago's official capacity claims but not his individual capacity claims. On appeal, the Eighth Circuit first held that the district court had improperly applied the Fourth Amendment legal standard when resolving Santiago's excessive force claim. It remanded for analysis of that claim under the Eighth Amendment standard articulated in *Johnson v. Bi-State Justice Center/Arkansas Department of Corrections*, 12 F.3d 133 (8th Cir. 1993).

The Court of Appeals then held that Clubbs was not entitled to qualified immunity on Santiago's claim of retaliatory death threats, finding that "a reasonable jury could conclude that Clubbs issued the death threats because Santiago had filed and pursued his excessive force grievance."

Likewise, the appellate court found that Lt. Blair was not entitled to qualified immunity on the retaliation claims. "Taken in the light most favorable to Santiago, a reasonable jury could conclude that [the] facts demonstrate that Blair took the ... adverse actions because of Santiago's

continued use of the prison grievance procedure," the Eighth Circuit wrote, noting that "The right to be free from retaliation for availing one's self of the prison grievance process has been clearly established in this circuit for more than twenty years."

Turning to Santiago's retaliatory discipline claim against Clubbs, the Court of Appeals held that it was "undisputed that Clubbs filed a [disciplinary] report detailing Santiago's alleged assault and that Santiago was brought before a disciplinary action board for a hearing at which he was found guilty of assault." The Eighth Circuit noted that "claims of retaliation fail if the alleged retaliatory conduct violations were issued for the actual violation of a prison rule," cit-

ing *Hartsfield v. Nichols*, 511 F.3d 826 (8th Cir. 2008). As such, Santiago's retaliatory discipline claim "fails as a matter of law and Clubbs is entitled to qualified immunity" on that claim.

Finally, the Court of Appeals found that Captain Garry Branch was entitled to qualified immunity on Santiago's deliberate indifference claim because there was no evidence he had deliberately disregarded Santiago's medical needs with respect to his injured wrist. See: *Santiago v. Blair*, 707 F.3d 984 (8th Cir. 2013).

Following remand, the district court appointed counsel to represent Santiago; this case remains pending with a jury trial scheduled for July 28, 2014. ■

## Islamic Organization Petitions to Let Muslim Women Prisoners Wear Hijabs

by Christopher Zoukis

IN MAY 2013, THE COUNCIL ON American-Islamic Relations (CAIR) petitioned the U.S. Department of Justice (DOJ) to establish a uniform policy for all local, state and federal correctional facilities to allow Muslim women to wear hijab head coverings while incarcerated and when photos are taken, such as during the booking process.

According to an interview with Al Arabiya, a Saudi-owned news outlet, Nadhira Al-Khalili, CAIR's legal counsel, said, "I'm working on several pending cases in different states and I'm in touch with an attorney for the [DOJ's] Office of Civil Rights."

The executive director of CAIR's Michigan chapter, Dawud Walid, said the city of Novi, Michigan had adopted a policy to allow Muslim women to keep their hijab while in jail. "If hijab is allowed in the military, and U.S. driving licenses permit women IDs with hijab, then the same logic can be applied," he noted. "Hijab doesn't impede the identity of women."

The federal Bureau of Prisons allows Muslim women prisoners to retain and wear hijab headscarves pursuant to BOP Program Statement 5360.09. While some federal facilities require prisoners to remove their hijab for inspection upon arrival at

the prison and after visits and outside trips, they are otherwise permitted to wear hijabs. State Departments of Corrections have varying protocols regarding religious head coverings.

Whether a national policy could be implemented is unclear, but Al-Khalili remains optimistic. While noting that "[t]he courts generally don't want to intervene in the professional judgment of a sheriff," he said some courts have ruled in favor of Muslim women with respect to wearing hijabs.

One case involving a prisoner's right to wear a hijab was heard by the en banc Ninth Circuit Court of Appeals, which reversed a panel decision holding that Orange County, California deputies hadn't violated a Muslim woman's right to wear a hijab. See: *Khatib v. County of Orange*, 639 F.3d 898 (9th Cir. 2011) (en banc), cert. denied.

Souhair Khatib had been detained in a courthouse cell on a probation matter in June 2006 when a male booking officer ordered her to hand over her hijab. Having her head uncovered in public, especially in front of men, was "a serious breach of [her] faith, a deeply humiliating and defiling experience."

She sued under the Religious Land Use and Institutionalized Persons Act (RLU-

IPA), claiming a substantial burden of her right to practice her religion. The Court of Appeals initially ruled against her, finding that a courthouse holding cell is not an "institution" as defined by RLUIPA. However, an en banc decision sent the case back to the district court for review on the merits, to determine whether Khatib's right to wear a hijab was protected under RLUIPA.

The case settled after remand in February 2013, with Orange County agreeing to prohibit sheriff's deputies from ordering prisoners to remove religious attire in ways that violate their beliefs; the settlement applies not only to Muslims but to those of other faiths, such as Sikhs (who wear turbans) and Jews (who wear yarmulkes). The county also agreed to train sheriff's deputies on the new policy and to pay \$85,000 in damages, fees and costs.

"I praise Allah and thank Him that I live in a country where I can practice my religion freely," Khatib stated. "While not everyone understands Islam or what it requires of me, I'm grateful that the U.S. government protects my right to fulfill my duty to Allah, whether at work, on a public street or, yes, even in a sheriff's holding facility."

In March 2013, CAIR announced that it applauded a decision by the Alvin S. Glenn Detention Center in Richland County, South Carolina to change its policy to allow Muslim women to wear hijabs. CAIR had contacted the jail after a Muslim prisoner claimed she was intimidated into removing her hijab when a booking photo was taken.

"As requested, we have reviewed and updated our policies to ensure clarity with our staff on the processing and searching of female detainees of the Muslim faith, and specifically have exempted the wearing of religious headwear from our facility's 'Prohibited Acts' policy," stated Ronaldo D. Myers, the jail's director.

Similarly, as of January 2013, prisoners at the King County jail in Washington state are permitted to wear generic hijabs and other religious head coverings that are provided by the sheriff's department. The head coverings can be inspected for security purposes, but only by a guard of the same gender as the prisoner. ■

Sources: [www.correctionsone.com](http://www.correctionsone.com), <http://dailycaller.com>, [www.washingtontimes.com](http://www.washingtontimes.com), [www.aclusocal.org](http://www.aclusocal.org), [www.wistv.com](http://www.wistv.com), KPLU

## BETTER JOBS FASTER PAROLE

**The only affordable 2-yr and 4-yr college programs available to inmates**

New Freedom College is designed for inmates, so our 2-yr & 4-yr programs offer a wide range of classes & majors that can all be completed in prison. At only \$33-\$50/credit, NFC will save you over \$20,000 compared to traditional schools like Adams State (\$165/credit + books = about \$25,000 for 120 cr).

New Freedom has:

- majors you want like Business & Psych
- multi-class & referral discounts
- lots of feedback
- flexibility to meet your needs & openness to your ideas
- low rates that include books, study guides, etc.



4-yr diploma as low as \$3,960

We have a Certificate Program so everyone can participate, plus a monthly payment plan to best meet what you're able to afford.

... Write for info guide & enrollment form:

**NF New Freedom College**  
1957 W. Burnside St. #1660  
Portland, OR 97209  
[NewFreedomCollege.org](http://NewFreedomCollege.org)

**William L Schmidt**  
ATTORNEY at LAW, P.C.

[911CIVILRIGHTS@GMAIL.COM](mailto:911CIVILRIGHTS@GMAIL.COM)

**559.261.2222**

### OCTOBER 2013, CALIFORNIA:

- \$90,000 settlement with CDCR and LA Sheriff
- Confidential settlement with CDCR
- \$600,000 injury recovery
- \$150,000 bad faith settlement
- Federal action dismissed without penalty by agency
- Parole dates granted by BPH

CIVIL RIGHTS-SECTION 1983-FEDERAL AND STATE  
APPEALS AND WRITS- ONLY COMPLEX AND UNIQUE CASES  
PRISON-TRANSFER-DISCIPLINE-VISITING-CLASSIFICATION-HOUSING  
PROP. 36 RE-SENTENCING-3 STRIKES-MEDICAL-PAROLE HEARINGS

-----OUR CLIENTS GO HOME, HOW ABOUT YOU? -----

*Please submit a single page summary of your case. Due to the volume, we cannot return documents or respond to all inquires. We are not a low cost or pro bono law firm, but if you want results, contact us.*

**PO Box 25001  
Fresno, CA  
93729**

# West Virginia Sex Offender Does Not Have Right to Attend Specified Church

**T**HE WEST VIRGINIA SUPREME COURT held on February 22, 2013 that a convicted sex offender does not have an automatic right to attend religious services of his choice. The Court's ruling was not based on the right to exercise religious freedoms under the state or federal constitutions, however; it was instead based, as the petitioner urged, upon a provision of the Home Incarceration Act.

Before the state Supreme Court was a habeas petition filed by Charles R. Elder, who entered guilty pleas to charges of sexual abuse by a person in a position of trust and third-degree sexual assault. In its brief, the state alleged Elder had "perpetrated hundreds, if not thousands, of sexual assaults against his stepdaughters while they were minors and that after one of the stepdaughters was impregnated by the petitioner, the petitioner himself performed a crude abortion on the victim."

Due to Elder's diagnosis of Parkinson's disease, post-traumatic stress disorder and depression, he was allowed to serve his concurrent sentences of ten-to-twenty years and one-to-five years on home confinement. The Supreme Court noted this was the first time it had "squarely addressed the issue of whether home incarceration constitutes the qualifying level of incarceration for purposes of seeking post-conviction relief in habeas corpus," and the Court found that home confinement met the definition of "incarceration" and thus the requirements for filing a habeas petition.

As to Elder's ineffective assistance of counsel claim raised in his petition, the Supreme Court held that given Elder's "admission to committing undisputedly offensive criminal conduct," his attorney's failure to file an unmeritorious appeal and motion for reconsideration did not constitute ineffective assistance.

With respect to Elder's claim that the trial court had refused to allow him to attend religious services at the Weston Church of God, the Supreme Court acknowledged the Home Incarceration Act provides for religious exceptions. However, Elder had overlooked "an implied need to determine whether [the statute's] exceptions apply to the particular offender," which was subject to the trial court's approval.

Elder was not attending church at the time he was sentenced, and the trial court took into account its "duty to protect the children who would either be on the church bus or van or inside the sanctuary during worship services." The trial court also noted that the pastor and members of the Weston Church of God were regularly visiting

Elder's home for Bible studies. Although Elder "does not have an automatic right to attend religious services" under the Home Incarceration Act, he "is free to exercise his religious freedom in other ways," the Supreme Court concluded. See: *Elder v. Scolapia*, 230 W.Va. 422, 738 S.E.2d 924 (W.Va. 2013). ■

## Ninth Circuit Reverses Dismissal of Wiccan Prisoners' Establishment Clause Claim

**O**N FEBRUARY 19, 2013, THE NINTH Circuit reversed a district court's dismissal of a lawsuit brought under 42 U.S.C. § 1983 by two California prisoners who alleged that prison officials had violated their constitutional rights by failing to apply neutral criteria in determining whether paid chaplaincy positions were necessary to meet the religious needs of prisoners adhering to religions outside the five major mainstream faiths – Catholic, Protestant, Jewish, Muslim and Native American.

State prisoners Caren Hill and Shawna Hartmann, practicing Wiccans at the Central California Women's Facility (CCWF) in Chowchilla, filed suit claiming that California Department of Corrections and Rehabilitation (CDCR) officials had violated their religious rights.

They raised claims under the First Amendment's Free Exercise and Establishment Clauses, the Fourteenth Amendment's Equal Protection Clause and the Religious Land Use and Institutionalized Persons Act (RLUIPA), as well as the California Constitution, related to the CDCR's refusal to hire a paid full-time Wiccan chaplain and failure to apply neutral criteria in evaluating whether a growing membership in minority religions warranted a reallocation of the resources used to accommodate prisoners' religious exercise needs.

The district court dismissed the plaintiffs' third amended complaint on the ground that it failed to state a claim for relief under Fed.R.Civ.P. 12(b)(6).

On appeal, the Ninth Circuit held that the Free Exercise Clause only requires prison officials to provide prisoners a "reasonable opportunity" to practice their faith, and that insofar as the CDCR allows staff

chaplains of other faiths, as well as volunteer Wiccan chaplains, to assist Wiccan prisoners in the practice of their religion – and Hill and Hartmann conceded that they had received such assistance – their Free Exercise claim failed. The appellate court noted that "it is well-settled that the First Amendment does not require prison administration to provide inmates with the chaplain of their choice."

With respect to the Equal Protection claim, the Court of Appeals held the complaint lacked facts demonstrating that prison officials had acted with discriminatory intent.

In regard to the RLUIPA claim, the Court found that the complaint failed to allege any factual allegations showing that the plaintiffs' religious exercise was so substantially burdened that they felt pressured to abandon their faith.

Addressing the Establishment Clause claim, however, the Ninth Circuit took note of the plaintiffs' allegations that more prisoners practice the Wiccan religion at CCWF than there are practicing Jewish, Muslim and Catholic prisoners at the facility, yet only Wiccans lacked the benefit of a paid full-time chaplain. If proven, the Court of Appeals held, those allegations could establish that CDCR "favor[s] some religions over others on a preferential basis" in violation of the Establishment Clause. Thus, the district court's judgment was reversed as to that claim and a state constitutional claim.

Hartmann was released prior to the appellate court's ruling, which mooted her claims for declaratory and injunctive relief. Hill and Hartmann were ably represented by attorneys David C. Kiernan, Thomas



Ritchie and Barbara McGraw. See: *Hartmann v. California Dept. of Corrections and Rehabilitation*, 707 F.3d 1114 (9th Cir. 2013).

Following remand, Hill was released several weeks after the Ninth Circuit's ruling as a result of changes in the application of California's three-strikes law. Conse-

quently, since the lawsuit did not include a request for monetary damages, the remaining claims were mooted and the case was voluntarily dismissed in June 2013. ▀

## Rules Governing Lethal Injections Not Required under Georgia Law

**T**HE GEORGIA SUPREME COURT HAS held that the state's Board of Corrections (BOC) is not statutorily required to promulgate rules governing lethal injections. The Court further held that neither the Georgia Department of Corrections (DOC) nor the Commissioner of Corrections has statutory authority to promulgate any legally binding rules.

This case involved the appeal of a superior court's dismissal of a mandamus petition filed by Warren Lee Hill, who is on death row for beating a fellow prisoner to death with a board studded with nails. The petition accused the BOC, DOC and Commissioner of failing to comply with the state's Administrative Procedure Act (APA) when adopting Georgia's new execution procedure. The new procedure, announced in July 2012, changed the three-drug lethal injection protocol to a one-drug protocol.

Initially, the Supreme Court noted that the APA specifically states the BOC and its penal institutions are not "agencies" under the Act. Therefore, unless provided for elsewhere in state law, the APA's requirements do not apply to the BOC and DOC.

Hill argued that OCGA Title 42 states the BOC shall adopt rules governing, among other things, the "treatment" of prisoners. The Court rejected Hill's argument that the term treatment includes the manner in which prisoners are executed;

rather, it said that term has a more-focused meaning of "medical care." To hold otherwise would render other parts of the statute superfluous or meaningless.

The Supreme Court agreed the BOC has the authority to make rules governing lethal injection procedures, but found it does not have a legal duty to do so. "[T]he Board is not specifically required by statute to make rules governing the particular subject of lethal injection procedures and ... the Board also has not abused its discretion in declining to exercise its general statutory authority to make rules governing any aspect of the prison system in declining to make such rules," the Court wrote.

Lethal injection protocols are heavily litigated and closely scrutinized by state and federal courts, and such litigation and scrutiny have required the DOC Commissioner "to make repeated changes to lethal injection procedures." It is not unreasonable for the BOC to entrust such specific areas of management to the Commissioner, the Supreme Court held.

Finally, it is the BOC, not the DOC

or Commissioner, that has authority to create rules governing the state's prison system. The Commissioner can propose that the BOC adopt rules within his management areas but has no legal duty to make such proposals. The dismissal of Hill's mandamus petition was affirmed, and the Supreme Court lifted the stay of execution it had granted pending the resolution of his appeal. See: *Hill v. Owens*, 292 Ga. 380, 738 S.E.2d 56 (Ga. 2013). ▀

### Roget's Thesaurus

Can't think of the right word?  
Let Roget's help you! Over 11,000 words listed alphabetically.  
See page 61 for more information.

## EXECUTIVE CLEMENCY

For Info. On Sentence Reduction through Executive Clemency:

**NATIONAL CLEMENCY PROJECT**  
3907 N. Federal Highway, # 151  
Pompano Beach, FL 33064  
954-271-2304



(35-Years of Clemency & Parole Assistance)  
(Transfers Under The Int'l Prisoner Treaty)

**ColdCrib**  
#1 JAILHOUSE CATALOG  
ISSUE#3 OUT NOW!  
3 FREE Non-Nude PHOTOS INCLUDED!  
WITH PURCHASE  
INMATES MUST SEND \$10  
TO GET YOUR OWN MULTI-PAGE  
CATALOG/MAGAZINE TO ORDER  
HUNDREDS OF LOVELY LADIES PHOTOS  
& OTHER SERVICES FOR THE INCARCERATED  
GET MAIL FROM FEMALE PENPALS  
GET LISTED ON OUR PENPAL SITE  
www.COLDCRIB.com  
Send your photo and info along  
with \$30 for 1 FULL year membership  
OR \$30 for Pen-Pal List of up to 50 addresses  
of our registered female PenPals  
REAL NAMES & ADDRESSES  
ColdCrib communications  
INMATES CALL CELL PHONES  
\$17/mo Unlimited Calls  
+ \$15 ONE TIME Activation Fee  
Federal, State, County & Local Facility Inmates  
Local Number Provided Same Day!  
NOW INMATES CAN ORDER THEIR OWN NUMBERS!  
MAKE EVERY CALL HOME A LOCAL CALL  
NO MORE RUNNING OUT OF MINUTES!  
SEND \$3 FOR PHONE PLAN APPLICATION FORM  
OR HAVE YOUR LOVED ONES ORDER ONLINE  
www.ColdCribCommunications.com  
SPECIAL OFFER  
BEST XXX PHOTOS  
VARIOUS BACKSHOTS & POSITIONS  
SET OF 15 (NON-NUDE) SEXY PHOTOS  
ONLY \$16  
INMATES MUST SEND FACILITY CHECK OR MONEY ORDERS  
COLD CRIB  
PO BOX 682407  
FRANKLIN TN 37069  
MUST ADD \$2 S/H FOR ALL ORDERS

# Private Corrections Institute Issues First Annual Awards for Activism, Advocacy and Reporting on Private Prisons

ON JANUARY 7, 2014, THE PRIVATE Corrections Institute (PCI), a Florida-based non-profit citizen watchdog organization, issued its first annual awards for individual activism, organizational advocacy and excellence in news reporting related to the private prison industry. PCI opposes the privatization of correctional services, including the operation of prisons and jails by for-profit companies.

PCI's first annual award for excellence in reporting on the private prison industry was awarded to journalist Beau Hodai, who publishes DBA Press ([www.dbapress.com](http://www.dbapress.com)), for his investigative articles on issues related to Corrections Corporation of America (CCA) and the GEO Group – the nation's two largest private prison firms.

Beau broke the news story about CCA's involvement in highly controversial anti-immigrant legislation in Arizona known as SB 1070 – a story that was subsequently picked up by other media, including National Public Radio. He also reported on political connections between GEO Group and Florida lawmakers in connection with an FBI probe involving the GEO-operated Blackwater River Correctional Facility in Florida. Several of his articles have been reprinted in *Prison Legal News*.

"The individuals who comprise the Private Corrections Institute are amazingly knowledgeable, dedicated, skilled and resourceful. To know that this group has found my work worthy of recognition is a deep honor," Beau stated.

Frank Smith received PCI's first annual award for exceptional activism against the privatization of correctional services. Frank, who previously served as PCI's field organizer assisting local communities in site fights against private prisons, is now a consultant for the Private Corrections Working Group. He is a retired Alaska state social worker and was elected to offices in three states, including two terms in the Kansas Silver Haired Legislature. Further, he authored a chapter in *Capitalist Punishment*, a 2003 anthology, titled "Incarceration of Native Americans and Private Prisons." He has long been an opponent of prison privatization.

"The for-profit prison industry is so corruptive, dangerous and larcenous that

it makes opposing their expansion plans a good deal easier than it might otherwise be, were they simply exploitative," Frank said upon accepting the award.

Finally, PCI's first annual award for outstanding advocacy against the privatization of correctional services went to Grassroots Leadership, a North Carolina-based non-profit organization. Grassroots Leadership has been involved in the fight against private prisons – including site fights, community organizing, legislative advocacy and research – for over a decade.

The organization was instrumental in pushing for the closure of the CCA-run Dawson State Jail in Texas in 2013 and has produced numerous reports concerning the private prison industry, including "Corrections Corporation of America: A Critical Look at its First Twenty Years" (2003); "Operation Streamline: Costs and Consequences" (Sept. 2012); "The Dirty Thirty: Nothing to Celebrate About 30 Years of Corrections Corporation of America" (July 2013); and most recently, "Locked Up and Shipped Away: Interstate Prisoner Transfer and the Private Prison Industry" (Nov. 2013). The award was presented to

Grassroots Leadership's executive director, Bob Libal.

"The mass incarceration and detention of people for the profit of corporations is one of the moral outrages of our time," Libal noted. "For years, the work of the Private Corrections Institute has been instrumental in exposing this industry. It's an honor for Grassroots Leadership to receive this award."

"PCI is pleased to recognize the contributions of these awardees to the ongoing debate over the privatization of correctional services," said PCI president Alex Friedmann, who also serves as managing editor of *Prison Legal News* and spent six years at a CCA-operated prison in the 1990s prior to his release in 1999. "PCI believes that incarcerating people for the purpose of generating corporate profit is immoral and has no place in a democratic society. Activism and advocacy against prison privatization, as well as accurate reporting on the private prison industry, are necessary to confront and end this social injustice."

The next Private Corrections Institute awards will be issued in January 2015. ■

Source: *PCI press release (Jan. 7, 2014)*

## Deliberate Indifference Medical Claim Accrues Upon Discovery of Injury and its Cause

THE SEVENTH CIRCUIT COURT OF Appeals has articulated a rule for determining when a prisoner's claim of deliberate indifference to a serious medical need accrues. In so doing, the Court reversed an Indiana federal district court's dismissal of a prisoner's lawsuit predicated upon expiration of the statute of limitations.

When Eugene Devbrow entered the Indiana Department of Correction (DOC) in 2000, he informed medical staff that a 1998 prostate-specific antigen (PSA) test revealed elevated levels, but a biopsy had come back benign. He further advised that his doctor said another test should be conducted in two to four years.

A PSA test conducted at Pendleton Correctional Facility on February 3, 2004

indicated that Devbrow had levels significantly elevated above normal. Nurse Practitioner Kelley Carroll requested a urology consultation, but Dr. Eke Kalu, the regional medical director for Prison Health Services, the DOC's private medical contractor, would not authorize it. Another test was conducted a week later, showing an even higher level. Dr. Malak Hermina examined Devbrow, found his prostate enlarged, and requested a urology consult. Again, Kalu denied the request.

Another PSA test was not conducted until February 10, 2005; it showed even higher elevation levels. Devbrow was taken to a hospital on April 27, 2005 to see a urologist and have a biopsy, which revealed a precursor to cancer. A follow-up biopsy in September confirmed that Devbrow had

prostate cancer, and he received that diagnosis on October 21, 2005. A subsequent bone scan on December 16 revealed the cancer had spread to his spine and was no longer operable.

Devbrow sued Kalu, Hermina and Carroll on October 19, 2007, alleging their delay in ordering a prostate biopsy prevented the diagnosis of cancer until after it had metastasized. The defendants moved to dismiss the suit as untimely under the two-year statute of limitations for personal injury actions under state law. The district court granted their motions, finding the limitations period had commenced when Devbrow was referred for a biopsy on April 27, 2005.

On appeal, the Seventh Circuit held that when a civil rights action is "based on a medical injury arising from deliberate indifference, the relevant injury for statute-of-limitations purposes is not the intangible harm to the prisoner's constitutional rights but the physical injury caused by the defendants' indifference to the prisoner's medical needs," referencing *Richards v. Mitchell*, 696 F.3d 635 (7th Cir. 2012).

A deliberate indifference claim, therefore, accrues "when the plaintiff knows of his physical injury and its cause." While the limitations period starts when the injury and its cause are discovered, even if the full extent or severity of the injury is not known, in certain circumstances the limitations period may commence *later* than the date of discovery; however, it does not begin any *earlier* than the date of the discovery of the injury and its cause, the Court of Appeals found.

Devbrow did not learn of his cancer diagnosis until October 21, 2005, or that the cancer had metastasized until December 16.

Thus, the appellate court held the expiration date for the statute of limitations was no earlier than October 21 and perhaps as late as December 16, 2005. Either way, Devbrow's lawsuit was timely filed within the two-year limitations period.

The Seventh Circuit rejected the defendants' position that Devbrow could have filed a suit for nominal or presumed damages earlier, even absent a physical injury; the appellate court noted that "[t]he claim asserted here involves an actual physical injury, not an abstract

or intangible one." It further held that the continuing violation doctrine, which serves to extend the statute of limitations period in certain circumstances, was not applicable.

Accordingly, the district court's order was reversed and the case remanded for further proceedings. See: *Devbrow v. Kalu*, 705 F.3d 765 (7th Cir. 2013). Following remand, the district court denied the defendants' motions for summary judgment in December 2013. The case is scheduled for trial on March 24, 2014. ■

## BRANLETTES BEAUTIES

### OUR SIMPLE POLICIES:

SPECIAL REQUESTS ARE NOT PERMITTED AND ALL MODELS ARE OF LEGAL AGE (BOP-FRIENDLY). DUE TO TREMENDOUS TIME AND COST ANSWERING LETTERS, UNLESS YOU ARE PLACING AN ORDER OR A QUESTION REGARDING YOUR ORDER, WE WILL NOT REPLY TO ANY OTHER QUESTIONS. SASE ARE REQUIRED FOR ANY INQUIRIES OR CONCERNS!

**YOU AND YOU ALONE ARE RESPONSIBLE FOR YOUR SELECTIONS BEING ALLOWED INTO YOUR FACILITY:**

KNOW YOUR INSTITUTIONS POLICIES AS TO WHAT IMAGE CONTENT IS ALLOWED. RETURNED ORDERS ARE NON-REFUNDABLE. THEY WILL BE HELD FOR 14 CALENDAR DAYS IN ORDER FOR YOU TO SEND SELF-ADDRESSED STAMPED: 3 FIRST CLASS STAMPS PER ENVELOPE, WITH A STREET ADDRESS FOR EVERY 20 PICTURES. ALL RETURNED IMAGES HELD AFTER TWO WEEKS WILL BE RESOLD AND WE WILL RETURN TO OUR STOCK.

**ALL PAYMENTS ARE BY INSTITUTIONAL CHECKS OR U.S. POSTAL SERVICE OR WESTERN UNION MONEY ORDERS.**

THESE PAYMENTS ARE PROCESSED IMMEDIATELY AND SHIPPED IN LESS THAN 3-4 WEEKS. ANY OTHER COMPANY MONEY ORDERS DELAY SHIPMENT 8-10 WEEKS OR UNTIL THAT MONEY CLEARS OUR BANK. YES, WE DEAL WITH PEOPLE THAT ARE, WHILE IN PRISON, STILL TRYING NICKEL AND DIME SCAMS...

**ALL SALES ARE FINAL! EACH CATALOG HAS 84 GORGEOUS LADIES TO CHOOSE FROM HIGH QUALITY PRINTS ON 4X6 GLOSSY PHOTO PAPER**

OUR PRICES ARE SIMPLE:

1-4999 PHOTOS = 0.45 CENTS EACH  
5000+ PHOTOS = 20% DISCOUNT  
1-9 CATALOGS: \$3.00 EACH (+SASE)  
10 CATALOGS: \$25.00+SASE (4 STAMPS)

SHIPPING & HANDLING:

DUE TO VARIOUS PRISON POLICIES REGARDING HOW MANY PICTURES CAN BE SENT IN ONE ENVELOPE, OUR POLICY IS AS FOLLOWS:

01 - 5 PHOTOS---\$1.00 PER ENVELOPE  
06 - 15 PHOTOS---\$1.50 PER ENVELOPE  
16 - 25 PHOTOS---\$2.00 PER ENVELOPE

### BRANLETTES BEAUTIES

SELECT YOUR FAVORITE:

WHITE CATALOGS (60 VOLUMES)  
BLACK CATALOGS (60 VOLUMES)  
ASIAN&LATINO CATALOGS (60 VOLUMES)  
PLEASE STATE WHAT STYLE PHOTOS:  
PROVOCATIVE POSES OR NUDE

### FREE CATALOG???

YOU READ IT RIGHT!  
JUST SEND A SELF ADDRESSED ENVELOPE TO US, AND WE WILL SEND TO YOU ONE BOP-FRIENDLY SAMPLE CATALOG (ONE PER CUSTOMER) WITH 84 GORGEOUS GIRLS IN FULL COLOR. ACT NOW AS THIS OFFER WILL NOT BE AROUND LONG!!

BRANLETTES BEAUTIES BREATHELESS BEAUTIES BAG A RANDOM SELECTION OF 50 OF THE RARE AND EXOTIC \*\*\*\*\*YES, FIFTY BEAUTIES ALL POSING JUST FOR YOU! \*\*\*\*\* PLUS TWO OF OUR FINEST COLOUR CATALOGS ONLY \$19.95 DID YOU READ THAT RIGHT??? \*\*\*\*\*\$19.95??? \*\*\*\*\*YES, ONLY \$19.95 FOR 50 OF BRANLETTES BEAUTIES BREATHELESS BEAUTIES (PLEASE SPECIFY NUDE OR BOP-FRIENDLY) \*\*\*\*\*PLUS\*\*\*\*\* TWO OF OUR FINEST COLOUR CATALOGS FREE (YOU PICK A VOLUME) \*\*\*\*\*OUR REGULAR SHIPPING AND HANDLING POLICIES APPLY.

**BRANLETTES**  
P.O. BOX 5765  
BALTIMORE, MD  
21282

## MARILEE MARSHALL & ASSOCIATES, ATTORNEYS AT LAW

California State Bar Board of Specialization

**Certified Criminal Law and  
Appellate Law Specialist**

***If you have a California case  
you need a California lawyer!***

**(213) 489-7715**



**State and Federal Appeals and Writs,  
Lifer Parole Hearings and Related Writs**

**29 years of success**

523 West Sixth Street, Suite 1109  
Los Angeles, CA. 90014

marileemarshallandassociates.com



# Criminal Background Checks Criticized for Incorrect Data, Racial Discrimination

by Derek Gilna

**A** JULY 2013 STUDY BY THE NATIONAL Employment Law Project (NELP) found that widespread errors in FBI arrest data – which is increasingly relied upon by employers conducting criminal background checks – has reached alarming proportions. According to NELP staff attorney Madeline Neighly, the FBI records used for background checks “might be considered the gold standard, but these records are a mess.”

Part of the problem stems from the fact that the FBI is processing almost 17 million criminal background checks annually, or six times more than a decade ago. NELP reported that as many as 50% of the records compiled by the FBI, which constitute the largest database of criminal records in the nation, may be inaccurate or incomplete – resulting in serious economic hardships, especially for minority job applicants.

One reason for the inaccuracies is that background checks are quick to include arrests and criminal charges but much slower to show dismissals, not-guilty findings, expungements, felonies reduced to misdemeanors and other dispositions of criminal proceedings. The FBI acts as a clearinghouse for state agencies that supply arrest and criminal record data, which is collected and incorporated into background checks disseminated to authorized third parties.

Unfortunately, the FBI apparently lacks the resources to verify the accuracy of the data being supplied to potential employers, resulting in the undeserved rejection of many otherwise qualified job applicants.

Other problems with background checks are attributable to private companies that compile criminal record information from public databases, using software that often fails to distinguish between people with the same or similar names, or those who are victims of identity theft. [See: *PLN*, May 2013, p.34].

Further complicating the situation is the fact that applicants rejected due to inaccurate background records are disproportionately black or Hispanic, raising the possibility of racial discrimination. According to a 2010 report issued by the U.S.

Department of Justice, in approximately half the states up to 40% of criminal records were missing final dispositions. Backlogs in updating this data varied from state to state, sometimes taking up to 18 months.

Although the FBI cautions in its background checks that job applicants should be provided an opportunity to challenge or correct their records, that does not always occur. Instead, the burden falls on the applicant to prove his or her innocence. When potential employees are given a copy of the faulty background information and a meaningful opportunity to challenge inaccuracies, they are often able to correct the errors.

One example of the ordeal faced by job applicants rejected due to incorrect criminal background data is the plight of seaport workers, who are required by the Transportation Security Administration to pass an FBI background check. More than 120,000 applications for seaport workers have been rejected since 2007, but applicants were successful in 94% of the cases where they filed appeals or sought waivers.

As another example, the Department of Commerce’s 2010 census required the hiring of vast numbers of people, and 4 million job applications were received. Of those, a quarter were rejected as a result of FBI background checks. A lawsuit filed in April 2010 alleges that applicants had only a month to disprove the negative reports, which disproportionately discriminated against blacks and Hispanics. If certified, the class of eligible claimants is estimated to number over 850,000. The district court denied the Department of Commerce’s motion to dismiss on March 22, 2012, and the case remains pending. See: *Houser v. Blank*, U.S.D.C. (S.D. NY), Case No. 1:10-cv-03105-FM.

In its July 2013 report, NELP advocated for a more equitable appeal process when incorrect information is included in criminal background checks, which would give rejected job applicants at least two months after they are apprised of the reason for the rejection to submit evidence to dispute faulty background information.

“[T]hese inaccuracies have a devastat-

ing impact on workers, especially workers of color who are disproportionately impacted by the criminal justice system. There is a solution to this problem that would immediately result in less job-loss and financial hardship: the FBI must ensure that records are accurate and complete prior to being released for employment and licensing decisions,” NELP concluded.

Additionally, the Equal Employment Opportunity Commission (EEOC) has grown concerned in recent years with possible racial discrimination due to the increased use of criminal background checks, and the agency issued new guidance to employers on that issue in April 2012. [See: *PLN*, June 2012, p.20]. Approximately 86% of employers use background checks during the hiring process, according to a 2012 survey by the Society for Human Resource Management.

“Title VII of the Civil Rights Act of 1964 prohibits discrimination against job applicants and employees on account of their race,” said EEOC Chairwoman Jacqueline A. Berrien. “Since issuing its first written policy guidance in the 1980s regarding the use of arrest and conviction records in employment decisions, the EEOC has advised employers that under certain circumstances, their use of that information to deny employment opportunities could be at odds with Title VII.”

In June 2013, the EEOC took legal action against two large companies – Dolgencorp LLC, the parent corporation of discount retailer Dollar General, and a BMW factory in South Carolina – due to their hiring practices. According to a lawsuit filed by the EEOC, Dollar General violated the civil rights of two job applicants – incorrectly stating that one had a felony conviction based on a background check, while denying employment to another applicant who had disclosed a six-year-old conviction.

In another suit, the EEOC argued that BMW’s requirement that contract workers already employed at the company’s plant had to reapply for their jobs in 2008 resulted in a disproportionate percentage of minority employees being fired for failing



background checks, absent individualized assessments. Both suits were brought under Title VII of the Civil Rights Act. See: *EEOC v. Dolgencorp LLC*, U.S.D.C. (N.D. Ill.), Case No. 1:13-cv-04307 and *EEOC v. BMW Manufacturing Co. LLC*, U.S.D.C. (D. SC), Case No. 7:13-cv-01583-HMH-JDA.

Predictably the EEOC faced intense criticism from business interests, with some saying the agency was trying to protect "former criminals." Todd McCracken, with the National Small Business Association, noted, "State and federal courts will allow potentially devastating tort lawsuits against businesses that hire felons who commit crimes at the workplace or in customers' homes. Yet the EEOC is threatening to launch lawsuits if they do not hire those same felons."

According to BMW spokesman Kenn Sparks, "BMW believes that it has complied with the letter and spirit of the law and will defend itself against the EEOC's allegations of race discrimination." Dollar General announced that its employment policies are "structured to foster a safe and healthy environment for its employees, its

customers, and to protect its assets in a lawful, reasonable and nondiscriminatory manner."

Yet when rejecting job applicants with criminal records, Dollar General and BMW appear to be working at cross-purposes. Given the nation's enormous prison population and with around 637,000 prisoners being released each year, it is unwise on many levels to refuse to hire people who are otherwise qualified when employment is essential to help ex-offenders become law-abiding, tax-paying citizens.

Nine state Attorneys General sent a joint letter to the EEOC on July 24, 2013 in response to the agency's lawsuits against Dollar General and BMW, protesting the EEOC's enforcement actions related to criminal background checks. The Attorneys General called the suits "misguided and a quintessential example of gross federal overreach."

Lawsuits al-

leging discrimination due to criminal background checks that disproportionately impact minorities are not easy wins, however, even for the EEOC. On August 9, 2013, a federal district court in Maryland ruled against the agency in a case similar to those filed against Dollar General and BMW, finding that an event-marketing firm, Freeman Co., did not discriminate against minority job applicants by conducting criminal background and credit checks during the hiring process. In dismissing the case, the court noted that the EEOC itself uses background checks. See: *EEOC v. Freeman Co.*, U.S.D.C. (D. Md.), Case No. 8:09-cv-02573-RWT; 2013 U.S. Dist. LEXIS 112368.

## Learn The Law!

It's a **POWERFUL** influence in your life.

Choose education to help yourself and others. Blackstone's Independent Study Paralegal Program offers you the opportunity to be productive while serving time.

- Learn Civil & Criminal Law
- Learn Legal Research
- 110 Years of Legal Training Experience
- Study in Your Spare Time
- Affordable Tuition, Easy Payment Plan

Only  
**\$30.00**  
Per Month

☐ **Yes!** I'd like to learn more ☐ **Paralegal Course**  
Please rush me **FREE** course information.

Name \_\_\_\_\_ Doc# \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**Blackstone**  
**Career Institute**

Your tuition cost covers your entire program including all textbooks, study guides, exam and homework evaluation services, and your certificate.

P.O. Box 3717 • Allentown, PA 18106



# PRISONER ASSISTANT

REHABILITATION AND REENTRY PLANNING

---



**Join Our Exclusive Membership, Open a Bank Account and Gain Access to Our Services!**  
We only provide services to our clients, no exceptions.

MEMBERS ONLY

---

Bank Account under your social security number. Deposits, Statements, Money Orders, Bank Checks, Green Dot, Stamp Exchange, Wire Transfers, Direct Deposit & PayPal.

**BANKING & FINANCE**

---



Internet Purchases, Gift Cards, Greeting Cards, Lottery, Sporting News & Current Events, People Search, Personal Shopper. "If It Can Be Done, We Will Try To Do It", see our catalog for more.

---

We can do any Graphic Design project. Printed Material, Musical Emails, Creative Writing, Photo Reproduction & Forwarding, Book Publishing, Book Cover Design, Press Releases, Portfolio Creation, and Website Building.

**GRAPHIC DESIGN**

---



Mailboxes, Emails, Faxes, Texts, Scanning, Copies, Typing, Storage, Document Preparation, Internet Research, Prepaid, Contract & Computer Aided Phones.

---

Place your profile on [prisonerassistant.com](http://prisonerassistant.com) and access our Special Features; Classifieds, Portfolios, Posts & Blogs, Market Place and Sponsor a Prisoner.

**social content media**

---

PO Box 704-AD1  
Lake Harmony, PA 18624-0704  
[www.prisonerassistant.com](http://www.prisonerassistant.com)  
[info@prisonerassistant.com](mailto:info@prisonerassistant.com)  
(570) 722-5800

For more information - send \$4.50 to "Prisoner Assistant" for an Application Package and 80 page color catalog. If you send an SASE you will only receive a brochure.

---



**JOIN NOW!**



---

The services below are available to all prisoners - not just our clients

---

**Banking and Financial Management Course**  
120 pages, complete course with 8 chapters and exams. Transcript and Certificate available. Send \$25.00 to Prisoner Assistant at the address above with a request for the course. Open to Everyone.

**Personal Reentry Guide and Journal**  
233 pages, complete course with 7 chapters and exams. Transcript and Certificate available. Send \$30.00 to Prisoner Assistant at the address above with a request for the course. Open to Everyone.

## Background Check Problems (cont.)

In November 2013 the EEOC was sued by the State of Texas, which argued that the agency's guidance related to criminal background checks limits "the prerogative of employers, including Texas, to exclude convicted felons from employment." The EEOC filed a motion to dismiss on January 27, 2014, which remains pending. See: *State of Texas v. EEOC*, U.S.D.C. (N.D. Texas), Case No. 5:13-cv-00255-C.

Although there is some evidence that society's view of former prisoners is becoming less punitive, the reality is that ex-offenders still have a very difficult time finding jobs that pay a living wage. A 2003 study by sociologist Devah Pager found that being a minority increased the negative impact of a criminal history, in that white job applicants with criminal records were more likely to be hired than black applicants with similar records. It is unlikely that much has changed over the past decade.

The EEOC stated in its lawsuits against Dollar General and BMW that the companies used criminal background checks in a manner that had a "disparate impact" on minority job applicants, who are more likely to have criminal histories.

Yet barely mentioned in the studies related to background checks and criminal records, or in the EEOC's enforcement actions, is the fact that the underlying reason for many of the problems related to ex-offenders finding employment is our nation's policy of mass incarceration. Around 2.2 million people are incarcerated in prisons and jails at any given time; those released will all have criminal records and, thus, a paucity of job prospects.

According to a research study published in January 2014, 49% of black males, 44% of Hispanic males and 38% of white males are arrested by age 23, which can have a significant impact on their ability to find future employment.

"Criminal records that show up in [background] searches can impede employment, reduce access to housing, thwart admission to and financing for higher education and affect civic and volunteer activities such as voting or adoption. They also can damage personal and family relationships," noted University of South Carolina criminology professor Robert Brame, the lead author of the study.

Enforcement actions by the EEOC, "Ban the Box" initiatives to remove criminal history questions from job applications, federal legislation – such as the Fairness and Accuracy in Criminal Background Checks Act introduced by U.S. Rep. Bobby Scott in July 2013 – and increased awareness about the re-entry needs of released prisoners can help alleviate problems related to background checks and employment for ex-offenders. Ban the Box legislation has been enacted in ten states and dozens of cities, and some private employers, notably Target, no longer ask about criminal records on their job applications. [See: *PLN*, Sept. 2011, p.32].

But more is needed. Specifically, adding

"prior incarceration status" to the list of protected classes – which include race, ethnicity, gender, religion, age and disability – that employers may not legally consider when hiring job applicants would go a long way to help level the employment playing field for ex-offenders. That, however, is a solution unlikely to happen anytime soon. ■

Sources: "Wanted: Accurate FBI Background Checks for Employment," *National Employment Law Project* (July 2013), [www.washingtonpost.com](http://www.washingtonpost.com), [www.foxnews.com](http://www.foxnews.com), [www.eeoc.gov](http://www.eeoc.gov), [www.economist.com](http://www.economist.com), [www.thenation.com](http://www.thenation.com), [www.thecrimereport.org](http://www.thecrimereport.org), [www.eurekalert.org](http://www.eurekalert.org), *Wall Street Journal*, [www.labi.org](http://www.labi.org)

## Former Kansas Prisoner's Sexual Misconduct Suit Overcomes Qualified Immunity

THE TENTH CIRCUIT HAS AFFIRMED the denial of qualified immunity to a warden in a civil rights action that alleged he created and allowed a policy or culture of sexual misconduct and failed to take reasonable measures to abate that culture of sexual misconduct at a Kansas women's prison.

The lawsuit was brought by former Topoka Correctional Facility (TCF) prisoner Tracy Keith. Her suit, filed in federal district court, alleged that while she participated in a vocational training program at TCF her instructor, Ananastacio Gallardo, engaged in sexual misconduct with her in October 2007. Keith became pregnant as a result, and her pregnancy was terminated. [See: *PLN*, May 2010, p.18]. Gallardo pleaded guilty in June 2008 to a charge of unlawful sexual relations and two charges of trafficking contraband. He was placed on two years' probation and required to register as a sex offender.

Keith filed her civil rights suit in May 2011; she attached to the complaint a 2010 Kansas Legislative Post Audit Report that contained multiple findings regarding sexual misconduct at TCF. The district court granted qualified immunity to all the defendants except Gallardo and former TCF Warden Richard D. Koerner. Koerner appealed.

The Tenth Circuit noted that a supervisory official could be held liable under the claims alleged by Keith, stating, "it is clearly established that a prison official's deliberate indifference to sexual abuse

by prison employees violates the Eighth Amendment.... Such a violation occurs where 'the official knows of and disregards an excessive risk to inmate health or safety,' and there is an affirmative link between the constitutional deprivation and the supervisor's actions."

The appellate court cited four reasons why the case could not be subject to a motion to dismiss. First, Keith pointed to reports of at least 54 incidents of sexual misconduct and 33 incidents of undue familiarity involving staff and prisoners at TCF between 2005 and 2009, and to a 2005 lawsuit over strip searches at TCF, suggesting that Koerner had knowledge of those incidents. Next, she pointed to the Post Audit Report's findings of inconsistent staff discipline, failure to investigate and failure to terminate employees in response to substantiated complaints of sexual misconduct and undue familiarity.

Third, she alleged facts that tended to show the existence of structural policy issues that contributed to sexual misconduct at TCF. On that point, the Post Audit Report noted that "policy decisions – particularly decisions not to address known problems with the vocational training program and the insufficient use of cameras to monitor inmates and staff – made TCF 'ripe for staff misconduct.'" Finally, Keith alleged that a lack of training programs tailored to the all-female population at TCF contributed to sexual misconduct at the facility.

The Court of Appeals concluded that those allegations, which must be accepted as true when considering a motion to dismiss, were sufficient to defeat a grant of qualified immunity to the defendants. The district court's judgment was therefore affirmed and the case remanded for further proceedings,

where it remains pending. See: *Keith v. Kerner*, 707 F.3d 1185 (10th Cir. 2013).

In February 2013, Gallardo was sentenced in an unrelated federal prosecution to five years in prison and five years on supervised release for possessing firearms during a drug-related crime that involved

distribution of methamphetamine. On April 5, 2013, the Kansas Court of Appeals held that Gallardo was not required to register as a sex offender as part of his state conviction for unlawful sexual relations. See: *State v. Gallardo*, 48 Kan. App. 2d 756, 300 P.3d 89 (Kan. Ct. App. 2013). ■

## Ninth Circuit Upholds Six-Day Contraband Watch Conditions

**A** DIVIDED PANEL OF THE NINTH Circuit Court of Appeals has held that California prison officials are entitled to qualified immunity on a prisoner's claim that the conditions of a six-day contraband watch – which included 24-hour lighting, the absence of a mattress and extensive bodily restraints – violated the Eighth Amendment's ban on cruel and unusual punishment.

On April 30, 2002, shortly after Philisa Richard, the fiancée of CSP-Sacramento prisoner Rex Chappell, admitted she was the owner of a discarded hairpiece – which had tested positive for cocaine residue – found during a search of the area around the prison visiting room, guards searched Chappell's cell and discovered methamphetamine. He was then put on contraband watch to determine whether he had ingested or secreted any other drugs.

Chappell was placed in two pairs of underwear, one worn normally and the other backwards, with the underwear taped at the waist and thighs. He was also dressed in two jumpsuits, one worn normally and

the other backwards, with the suits taped at the thighs, ankles, waist and upper arms to close off any openings. He was then put in ankle shackles and a waist chain. Finally, he was placed in a surveillance cell with no furniture other than a bed without a mattress. There, chained to the bed and under constant bright lights so staff could observe him, Chappell was forced to "eat [his] food like a dog."

After having three bowel movements that did not reveal any drugs, he was released from contraband watch on May 6, 2002.

Chappell subsequently filed suit under 42 U.S.C. § 1983 alleging various constitutional violations. The district court granted summary judgment to the defendant prison officials on all but two of Chappell's claims – that the contraband watch constituted cruel and unusual punishment and that his due process rights were violated when he had neither received notice of nor an opportunity to rebut the charges against him before he was placed on contraband watch.

On interlocutory appeal, the Ninth Circuit reversed the district court's denial of summary judgment on those claims, holding the law was not clearly established as to whether the conditions of the contraband watch to which Chappell was subjected in 2002 violated the Eighth Amendment, or whether those conditions constituted an "atypical and significant hardship" sufficient to trigger due process protections.

In dissent, Circuit Judge Marsha S. Berzon expressed the view that a reasonable prison official would have known that, in combination, the 24-hour bright lights, absence of a mattress and extensive restraints risked depriving Chappell of sleep in violation of the Eighth Amendment, and that Chappell therefore should have had an opportunity to prove to a jury that the defendants were deliberately indifferent to the risk of physical or psychological harm created by the conditions of his confinement while on contraband watch. See: *Chappell v. Mandeville*, 706 F.3d 1052 (9th Cir. 2013). ■



**Serving You with Excellence Since 2009**

**We make it simple.**

**You reach your loved ones by calling a local number. That's a lot cheaper than calling long distance. It's that simple!**

- We charge \$2.50 per month for the number.
- For Calls to anywhere in the U.S., we charge you 5¢ per minute
- To Mexico - 15¢; to Canada - 11¢, to just about anywhere else in the world - 31¢
- No Contract, No Credit Check, No Setup Fee, No Cancellation Fee, No Early Termination Fee
- Cancel anytime; any money left on the account is refunded

**Tell Your Folks to Sign Up at [www.freedomline.net](http://www.freedomline.net)**

**Any time you refer a new customer and they sign up, you both get 300 free minutes! Some restrictions apply. Details upon request.**

**Or Mail: FreedomLine  
PO Box 7 - SCA  
Connersville, IN 47331**

**Also see our long-running Classified Ad in this and every issue**

**FCC Reg. No. 0021217047**

# Reflections on the No More Jails Campaign in Champaign County, Illinois

by James Kilgore

**W**HEN WE BEGAN OUR CAMPAIGN TO stop jail construction in Champaign County, Illinois in early 2012, I thought we were doomed. The grand plan to spend \$20 million on this project seemed like a done deal. The Sheriff was driving the initiative; the leading lights in the County Board seemed to think jail construction was the only prudent course. Yet, nearly two years later, we have a very different scenario. The 2014 budget for Champaign County doesn't include a single cent for jail construction. In fact, the county has allocated more than \$200,000 in new money for social programs aimed at keeping people out of jail. In a county of slightly more than 200,000 residents, this is an important start.

How did this happen? The answer is simple – a campaign of ordinary people, led by a core group from Champaign-Urbana Citizens for Peace and Justice (CUCPJ), turned the situation around. This campaign is proof that action by people at the grass-roots level can make a difference.

Here I want to briefly reflect on the key measures we took to make our campaign a success. But I also want to issue a word of warning: The campaign is not yet over. We are actually just beginning a much longer and more complicated process of changing the criminal legal system in this county from the “lock ‘em up and throw away the key” approach that has dominated not only Champaign County but much of the country for the last three decades.

## Background to No More Jails

Champaign County has two jails, one in downtown Urbana and another at Brookens in East Urbana. The impetus for the proposed jail expansion came from the supposed deterioration of the downtown facility, built in 1980. By 2012, local officials as well as an inspection team from the National Institute of Corrections declared that the downtown jail was in “deplorable” condition, actually beyond repair. They wanted to close it down and bring in the construction crews.

As noted above, in those early days they seemed destined to get their way. The sole voice in opposition was Board member

and CUCPJ leader Carol Ammons, now an Urbana City Council member. Gradually a core of us rallied around her and formed what would ultimately be “No More Jails.” Our foundation was the decade of work CUCPJ had done on social justice issues, particularly focusing on race and the criminal legal system. CUCPJ's campaigns against the use of Tasers by police, for jail phone justice and the mobilizations in response to the police killing of African-American youth Kiwane Carrington in 2009 formed a core of awareness and experience on which we could build.

Another precursor was a reading group based on Michelle Alexander's *The New Jim Crow*, in which many of us participated. Engaging with Michelle's book helped us to see the plans for new jail cells in our county as the local face of the racialized mass incarceration that she described so vividly. We wanted no part of it. We began to meet regularly and attend the County Board meetings. Our journey had begun.

## Keys to Success

### *Number One: Standing Firm on the Basics*

As I look back, I think there were five main reasons we managed to gain some measure of success. First, and most importantly, we stood firm on two principles: no new jail cells and the need for community participation in decision-making. When Board members and law enforcement came with explanations about how we needed a jail to protect the people inside, how we needed it because women and the mentally ill deserved better facilities, how having one jail instead of two would save the county money, we refused to budge. We correctly identified the key issue – the priority was to spend more money on ways to keep people out of jail, not ways to make people more comfortable inside their cells or make the system run more smoothly. We were also adamant that this process should be public. We were confident that few people in our county really wanted to spend their tax dollars on jail cells. Our views were borne out: through the entire time of the campaign not a single

person ever came to the County Board to speak in favor of building the jail.

### *Number Two: Adapting to Change*

Though we stood firm, we recognized that as the campaign progressed, the terrain changed. We began by attending Board meetings on a weekly basis and making presentations during public participation. Though we got a chilly reception at first, after a while some County Board members began to listen. We responded to their newfound openness to dialog and altered our tactics. Instead of opposing their every move, we found ways to work with them to shape the debate and decision-making process.

As a result, instead of hiring an architect and a construction firm, the county decided to contract a consultant to do a needs assessment – not only of the jail building issue, but of the criminal justice system as a whole. We then studied the firms that applied for the consultancy and advocated for the one we thought would be most likely to support an alternative course. When our favorite was selected, we connected with their director. We organized public meetings for him to dialog with local residents. We communicated with him individually, lobbying for our alternative vision to inform his report. We assisted him where possible in gathering information and in getting a better understanding of how the local system worked. In the end, he wrote a report which put jail building on the back burner and prioritized the kinds of alternatives to incarceration which we had been advocating all along. Our engagement with his work and his willingness to open the door to our ideas was crucial in influencing the County Board's final decisions.

We also pushed for another process, one that involved more public participation in the decision-making. This resulted in the Board setting up a Community Justice Task Force to develop proposals for alternatives to incarceration. Two CUCPJ members ended up on the Task Force and played a leading role in its operations and its lengthy final report of June 2013.

Once these processes got under way,



we developed working relationships with various board members. We identified our allies and those that were undecided, and held one-on-one meetings with them to discuss relevant issues. Gradually we made our dedication and knowledge apparent to them. Several members who were hostile to us initially began to listen.

### ***Number Three: Research, Research, Research***

We did our homework and became *the* experts on the issue. We spent hours building a profile of who was incarcerated in our county – demonstrating that our jail's cells were teeming with people who didn't belong there – those with traffic tickets, mental illness, substance abuse problems, women with non-violent charges. Most importantly, we identified the seriousness of the racial disparity in our jail population. We found that consistently more than half those in the jail were African-American in a county with a 13% Black population. This was a key point in exposing the pitfalls of building new jail cells – that ultimately they would end up caging more Black youth. We also uncovered the ways in which incarceration specifically impacted women in the jail, contributing to the separation of families and facilitating the unnecessary loss of child custody among parents in the jail population. All of this served to expose the irrationality of mass incarceration at the ground level.

We added a financial dimension to our research as well, uncovering how the county

was spending taxpayers' money and emphasizing the need to reallocate more of the \$4.6 million collected every year in Public Safety Sales Tax. At the time, the county was spending 95% of that money on bond repayment for criminal justice construction and support for law enforcement. In pressing for a change in the allocation of these revenues, we encouraged a new framing of the idea of public safety. For us and for much of the community, public safety was about ensuring people's access to healthcare, housing, employment, education and treatment, not simply increasing the number of police and jail cells.

Besides analyzing the local situation, we researched trends and successful changes in other communities across the country and brought them into our criminal justice debate. We spoke about prison closures in New York, the blocking of a jail construction plan in Bloomington, Indiana and a re-entry program in Richmond, California. This helped Board members realize that they would not be alone if they opted for changes.

### ***Number Four: Network, Network, Network***

We sought allies. We formed alliances with constituencies who would be affected by new jail cells. Groups like the National Alliance on Mental Illness (NAMI) and the local Immigration Forum played a vital role in convincing Board members that opposition to jail construction wasn't just coming from a small cohort of "fringe

elements" in the community. Other local organizations from various quarters added their own contribution to the campaign along the way: the ACLU; Against War, Racism and Exploitation (AWARE); the Campus Labor Coalition; Citizens with Conviction; the Friends Meeting; the Graduate Employees Organization (GEO); the League of Women Voters; the Ministerial Alliance; the NAACP; New Covenant; the North End Breakfast Club and the Planners' Network.

We further broadened our base by reaching out to the general public through door-to-door surveys, petitions, online appeals, building a social media presence and database, tabling at events like the Farmers' Market and C-U Days, holding public forums on key issues and using the airwaves of our local community radio station WEFT, especially the Saturday morning "Higher Ground" segment. One of our biggest successes was linking up with a local theater co-op to stage a showing of the anti-Drug War film, *The House I Live In*. We filled the theater to capacity – more than 300 people, including three County Board members, and used the opportunity to inform people about our campaign.

We also extended our networks beyond Champaign County, connecting with other groups in other parts of the country who had organized campaigns similar to ours and sharing experiences. These links were enhanced by joining Nation Inside, a national social media network focused on criminal justice issues. Their support gave

#### **LAW OFFICES OF**

**ELMER ROBERT KEACH, III**



Law Offices of Elmer Robert Keach, III, PC  
1040 Riverfront Center  
P.O. Box 70  
Amsterdam, NY 12010  
518.434.1718  
www.keachlawfirm.com

Attorney Bob Keach  
NITA Master Advocate  
Member, Multi-Million Dollar Advocates Forum  
Outside Counsel, Prison Legal News  
National Practice

### **Experienced Civil Rights Attorney dedicated to seeking justice for those who are incarcerated**

*Custodial Death Cases • Wrongful Arrest and Incarceration  
Medical Indifference Cases • Corrections and Police Brutality  
Sexual Abuse and Assault • Illegal Strip Searches  
Class Actions • First Amendment Litigation (Northeast Only)*

Reasonable Hourly Rates for: Criminal Defense, Appeals,  
Post-Conviction Relief, Habeas Corpus

**WHEN YOU OR A LOVED ONE HAVE BEEN WRONGED,  
YOU HAVE A VOICE.**

Attorney Keach prefers all inquiries by mail to be typed, and limited to five pages.  
DO NOT SEND ORIGINAL DOCUMENTS OR ORIGINAL MEDICAL RECORDS.  
Make sure to exhaust your administrative remedies and comply with state law notice requirements, if applicable, to preserve state law intentional tort/negligence claims.

---

## No More Jails Campaign (cont.)

---

us national exposure as well as a web-based platform to post messages, videos and other information about our work.

We used these connections to engineer a big final push as the time drew near for the County Board to vote on their next steps. We contacted our friends in academia and professional circles and got them to email, phone or meet face-to-face with their Board members. We upgraded our database and did phone banking to bring people out to Board meetings and mobilize them to communicate with their Board members. We printed lime green t-shirts with "Build Programs Not Jails" on the front and wore them en masse to Board meetings. We bombarded the Board Chair and the Chair of Finance with hundreds of postcards signed by our supporters made from lime green card stock, urging them to vote for alternatives to jail construction. We mobilized high-profile national campaigners like Michelle Alexander to sign onto a letter to the County Board praising their efforts to consider alternatives and urging them to stay away from further jail construction.

### *Number Five: Mass Incarceration is Always About Race*

We kept the issue of racial disparity at the center of our campaign. We found new ways to repeat a message that many Board members, law enforcement gatekeepers and much of the public simply did not want to hear – that we had a problem of racial profiling in our criminal justice system that required serious action, and building jail cells was only going to make it worse. We made sure that the Board knew this issue was not going to go away.

### **Next Steps**

THESE ARE SOME OF THE REASONS WHY we were able to stop the construction of jail cells. I wish I could say that we can now rest on our laurels, that the battle is over and our county is inevitably headed down a new path. But social change doesn't work like that. It is an uneven process.

Already elements in the judiciary are pushing back – refusing to implement some of the recommendations of the needs assessment consultant and the Community Justice Task Force. No doubt as some of the new programs experience growing pains,

others will want to turn the clock back and return to the old ways. We need to remain mobilized to make sure this doesn't happen. We have accomplished a lot in this campaign, but we have only just begun the journey to change how criminal justice operates in our county. Moreover, we have to push harder to move more resources across to housing, job creation, mental health and

family support in order to eradicate poverty and rebuild the communities that have been torn apart by mass incarceration. There is still a long way to travel. ■

*This article was originally published by Champaign-Urbana Citizens for Peace and Justice ([www.cucpj.org](http://www.cucpj.org)); it is reprinted with permission of the author.*

## **Ninth Circuit Questions Constitutionality of Requiring Jail Prisoners to Wear Pink Underwear**

*by Matt Clarke*

ON MARCH 7, 2012, THE NINTH CIRCUIT Court of Appeals issued a decision in which it questioned the constitutionality of a Maricopa County, Arizona jail policy that requires male pretrial detainees who have not been convicted of a crime to wear pink underwear. The appellate court did not specifically rule on the issue, as it had not been presented to the court due to erroneous limitations on the evidence introduced at trial.

Eric Vogel, 36, suffered from mental illness that caused him to be delusional. He lived with his mother and, other than attending schools in his youth, had left home only two or three times as an adult to attend funerals. The windows of his house were covered with blankets and tape to prevent anyone from looking in.

On November 12, 2001, Vogel wandered away from his home. A police officer, responding to a report of a suspected burglar in the area, stopped him. He struggled with the officer, shouting "Kill me." A second officer arrived and Vogel told him that he needed to see the president. The officers said they would take him to the president, but instead delivered him to the Maricopa County Jail where he was charged with assaulting a police officer.

During the booking process, a classification officer interviewed Vogel and placed a psychiatric hold on him. He was held overnight in an isolation cell with a large glass window that allowed staff and other prisoners to see him at all times.

A psychological counselor examined Vogel the next morning and, noting that he was disoriented, paranoid and psychotic, determined that he required psychiatric care and ordered him transferred to the jail's

inpatient psychiatric unit. That afternoon, guards told Vogel he must change into jail clothing, including pink underwear and pink slippers. He refused.

Four guards held Vogel down while a fifth forcibly changed his clothes. During this "dress-out" procedure, Vogel shouted for help and yelled that he was being raped. All of the guards involved in the dress-out knew he was being transferred to the inpatient psychiatric unit.

A week later, Vogel's mother bailed him out. Several weeks after his release from jail, Vogel was a passenger in his mother's car when she was in a minor accident. He had been told there was a warrant out for his arrest for spitting on a guard during the dress-out, and that he might be returned to jail. Informed that the police were on their way, he ran four or five miles to get away. He died of acute cardiac arrhythmia the next day. [See: *PLN*, Jan. 2011, p.16].

Vogel's estate sued Maricopa County and Sheriff Joe Arpaio, alleging violations of Vogel's federal civil rights and state torts. At trial, the district court refused to allow testimony by Vogel's relatives that he believed he had been raped during the dress-out procedure and that the pink underwear was forced on him to feminize him and prepare him to be abused by guards during a sex party. The court also declined to allow expert testimony that could have linked the stress Vogel experienced during the dress-out to his fatal cardiac arrhythmia, and to show that people with schizophrenia were at increased risk of cardiac arrhythmia. The jury found in favor of the defendants and Vogel's estate appealed.

The Ninth Circuit held that the district court's rulings were erroneous under either

the abuse of discretion or de novo standard of review and were highly prejudicial, cutting out the heart of the estate's case. The testimony of Vogel's relatives was not offered to prove that he had been raped, but rather to show that he thought he had been raped and what his emotional state was as a result of that belief. The experts, who were excluded because their opinions were based upon the excluded testimony, should have been permitted to testify, the Court of Appeals held.

The district court also erred in refusing to allow the estate a rebuttal argument for no reason and without informing the estate before closing arguments began. The Ninth Circuit further noted that requiring male prisoners who have not been convicted of a crime to wear pink underwear and slippers may be a violation of due process, as it could be seen as punishment because it has no apparent connection to the safety and security of the jail but rather appears to be intended to humiliate. If so, that practice would violate the due process clause by punishing people who have not been convicted of a crime. No ruling was made on this issue, however, because the erroneous evidentiary rulings by the lower court prevented it being developed at trial.

"When a color of such symbolic sig-

nificance is selected for jail underwear, it is difficult to believe that the choice of color was random," the appellate court wrote. "The County offers no penalogical reason, indeed no explanation whatsoever for its jail's odd choice. Given the cultural context, it is a fair inference that the color is chosen to symbolize a loss of masculine identity and power, to stigmatize the male prisoners as feminine."

The case was reversed and remanded to the district court, and the jury verdict and judgment were vacated. One panel judge filed a dissenting opinion that was longer than the majority opinion. See: *Wagner v. County of Maricopa*, 673 F.3d 977 (9th Cir. 2012), *rehearing and rehearing en banc denied*. The Ninth Circuit issued three amended rulings, most recently on February 13, 2013 [see: *Wagner v. County of Maricopa*, 706 F.3d 942 (9th Cir. 2013)], though the outcome remained the same. The U.S. Supreme Court denied the defendants' petition for writ of certiorari in March 2013.

The case remains pending on remand.



Additional sources: *Reuters*, *Chicago Tribune*

## Pennsylvania Jail Official Indicted for Groping Co-workers

by Christopher Zoukis

**R**ONALD EDWARD LENSBOUER, 44, THE Chief Corrections Officer at a jail in Somerset County, Pennsylvania, faces charges of indecently assaulting two female guards at the facility.


According to court records, Lensbouer was charged on June 5, 2013 in two separate cases with four misdemeanor counts each of indecent assault and harassment, and two summary charges of harassment – all misdemeanors.

An affidavit of probable cause filed in both cases stated the guards had to fight and struggle to free themselves from being groped by Lensbouer, their supervisor. Lensbouer had made lewd comments to both women from late 2010 through 2012. In separate incidents in December 2012, he allegedly placed his hands down each woman's pants while they worked in control rooms at the jail.

The same affidavit indicated that Lens-

bouer had confessed to the offenses during a May 7, 2013 interview with police. Borough Police Chief Randy Cox stated they were unable to take action on three other reports of similar misconduct by Lensbouer because the statute of limitations had expired.

County Commissioner Joe Betta said Lensbouer was suspended without pay. Betta expressed frustration that he had to push for months for an investigation, and that he didn't hear about the matter from jail administrators. "This should have been brought to our attention last year," he said.

Betta expressed gratitude to other jail guards who stood up for the women victimized by Lensbouer. "Unfortunately, there are a few [guards] who have the backbone of an amoeba," he said. "It's sad we had to work so long and hard to get something done." 

Sources: [www.correctionsone.com](http://www.correctionsone.com), [www.dailymail.com](http://www.dailymail.com), <http://triblive.com>

# LEARN TO PROTECT YOUR RIGHTS

## YOU HAVE A RIGHT TO

- Adequate medical care
- Protection from assault
- Humane living conditions
- Safety from officer abuse

Learn how to defend your basic human rights with the comprehensive litigation guide, **Protecting Your Health and Safety**, 2nd edition, written specifically for prisoners who are unable to receive help from a lawyer.

Written by Robert E. Toone  
Edited by Dan Manville  
A Project of the Southern Poverty Law Center\*

**COST** \$16 total  
(\$10 + \$6 shipping/handling)  
FREE shipping/handling for orders from Prison Legal News over \$50

## ORDER A COPY

Send a check  
or money order to:  
**Prison Legal News**  
**PO Box 1151**  
**Lake Worth, FL 33460**  
**561-360-2523**

Be sure to include your name, identification number (if any), and mailing address. We also accept VISA and Mastercard. If using a credit card, please include the type of card (VISA or Mastercard), card number, and expiration date.

This book does not deal with legal defense against criminal charges or challenges to convictions that are on appeal. Edition last revised in 2009.

\*Please do not send orders to the Southern Poverty Law Center.

# Solitary Confinement's Invisible Scars

*I spent more than five years of my sentence in "the box," for trivial violations. It's time we saw this casual abuse for what it is: torture.*

*by Five Oman Muallimm-ak*

As kids, many of us imagine having superpowers. An avid comic book reader, I often imagined being invisible. I never thought I would actually experience it, but I did.

It wasn't in a parallel universe – although it often felt that way – but right here in the Empire State, my home. While serving time in New York's prisons, I spent 2,054 days in solitary and other forms of isolated confinement, out of sight and invisible to other human beings – and eventually, even to myself.

After only a short time in solitary, I felt all of my senses begin to diminish. There was nothing to see but gray walls. In New York's so-called special housing units, or SHUs, most cells have solid steel doors, and many do not have windows. You cannot even tape up pictures or photographs; they must be kept in an envelope. To fight the blankness, I counted bricks and measured the walls. I stared obsessively at the bolts on the door to my cell.

There was nothing to hear except empty, echoing voices from other parts of the prison. I was so lonely that I hallucinated words coming out of the wind. They sounded like whispers. Sometimes I smelled the paint on the wall, but more often I just smelled myself, revolted by my own scent.

There was no touch. My food was pushed through a slot. Doors were activated by buzzers, even the one that led to a literal cage directly outside of my cell for one hour per day of "recreation."

Even time had no meaning in the SHU. The lights were kept on for 24 hours. I often found myself wondering if an event I was recollecting had happened that morning or days before. I talked to myself. I began to get scared that the guards would come in and kill me and leave me hanging in the cell. Who would know if something happened to me? Just as I was invisible, so was the space I inhabited.

The very essence of life, I came to learn during those seemingly endless days, is human contact, and the affirmation of existence that comes with it. Losing that

contact, you lose your sense of identity. You become nothing.

Everyone knows that prison is supposed to take away your freedom. But solitary doesn't just confine your body; it kills your soul.

Yet neither a judge nor a jury of my peers handed down this sentence to me. Each of the tormented 23 hours per day that I spent in a bathroom-sized room, without any contact with the outside world, was determined by prison staff.

Anyone lacking familiarity with our state prison system would probably guess I must have been a pretty scary, out-of-control prisoner. But I never committed one act of violence during my entire sentence. Instead, a series of "tickets," or disciplinary write-ups for prison rule violations, were punished with a total of more than five years in "the box."

In New York, guards give out tickets like penny candy. During my nine years in prison I received an endless stream of tickets, each one more absurd than the last. When I tried to use artwork to stay sane, I was ticketed for having too many pencils. Another time, I had too many postage stamps.

One day I ate an entire apple – including the core – because I was starving for lack of nutrition. I received a ticket for eating the core since apple seeds contain arsenic, as spelled out in the prison handbook. The next time I received an apple, fearful of another ticket, I simply left it on the tray. I received a ticket for "refusing to eat."

For the five years I spent in the box, I received insulin shots for my diabetes by extending my arm through the food slot in the cell's door ("therapy" for prisoners with mental illness is often conducted this way, as well). One day, the person who gave me the shot yanked roughly on my arm through the small opening and I instinctively pulled back. This earned me another ticket for "refusing medical attention," adding additional time to my solitary sentence.

My case is far from unusual. A 2012 study by the New York Civil Liberties Union found that five out of six of the

13,000 SHU sentences handed out each year are for nonviolent misbehavior, rather than violent acts. This brutal approach to discipline means that New York isolates its prisoners at rates well above the national average.

On any given day, some 4,300 men, women and children are in isolated confinement in the state, many for months or years. Those with more serious prison offenses have been held in solitary for 20 years or more.

Using this form of punishment is particularly absurd for minor rule infractions. But in truth, no one should be subjected to the kind of extreme isolation that is practiced in New York's prisons today. I have no doubt that what is going on in prisons all over our state is torture. Many national and international human rights groups – including UN Special Rapporteur on Torture Juan E. Méndez – concur. Yet it continues, unseen and largely ignored by the public.

The scars that isolated confinement leaves behind may be invisible, too, but they are no less painful or permanent than physical scars. Even now that I am out of prison, I suffer major psychological consequences from those years in isolation.

I know that I have irreparable memory damage. I can hardly sleep. I have a short temper. I do not like people to touch me. I cannot listen to music or watch television or sports. I am only beginning to recover my ability to talk on the phone. I no longer feel connected to people.

Even though I am a free man now, I often feel as though I remain invisible, going through the motions of life. Feeling tormented by a punishment that has ended is a strange and unnerving anguish. But there are thousands like me, and until New Yorkers choose to bear witness to the soul-destroying torture taking place in their own backyards, our suffering, too, will remain invisible. ■

*This article was originally published by The Guardian ([www.theguardian.com](http://www.theguardian.com)) on October 30, 2013; it is reprinted with permission.*



Editor's Note: A bill introduced by New York state Assemblyman Jeffrion L. Aubry and state Senator Bill Perkins in January 2014, the

Humane Alternatives to Long-Term Solitary Confinement Act, would limit solitary confinement in New York prisons and jails to 15

consecutive days within a 60-day period. The Assembly bill is A8588-2013 and the Senate bill is S6466-2013.

## Lawsuit, Whistleblower Allege Rape by Guards at New Mexico Prison

**A**LAWSUIT FILED IN MAY 2012, ALLEGING sexual abuse at the Central New Mexico Correctional Facility (CNMCF) in Los Lunas, compelled a retired prison guard to come forward and blow the whistle on several other officers, including one already accused of raping a prisoner.

The retired guard, whose identity was withheld by New Mexico TV station KOB Channel 4, called CNMCF captain Kenneth Carrejo a "pervert" who "liked to get the inmates one-on-one back in the infirmary."

"That's all he's ever been," the whistleblower said. "I would tell that to his face."

A lawsuit against Carrejo alleged that he handcuffed a male prisoner to furniture in an office and raped him. Carrejo also allegedly threatened to kill the prisoner if he reported the abuse. According to the suit, CNMCF warden Anthony Romero called in the state police to investigate and interview the victim; at least one of the state police officers who responded was Carrejo's brother.

"Obviously had we known that he was this guy's brother, we wouldn't have sent him because of the big conflict of interest there," said State Police Lt. Robert McDonald.

According to the whistleblower interviewed by KOB, several guards at CNMCF

forced prisoners to have sex with them. One prisoner in O-unit was allegedly "gang-banged" by guards, "who thought nothing to allow other inmates to gang-bang him" as well.

The retired guard also said he was confident that wardens and other top-level prison officials at the facility knew of the rapes and sexual abuse, "...unless they were deaf, dumb and stupid and blind."

KOB reported that attempts to interview New Mexico corrections department officials and a former warden at CNMCF were unsuccessful, and information released by the department was vague and evasive.

The lawsuit against Carrejo, filed by prisoner Kenneth Morgan, claimed that Carrejo had orally and anally raped him and that he had saved DNA evidence from the sexual assaults. The case settled in December 2013; citing state law, the New Mexico Risk Management Division declined to provide the amount of the settlement. See: *Morgan v. Carrejo*, U.S.D.C. (D. N.M.), Case No. 1:12-cv-00583-KG-LAM.

Carrejo, who retired in 2011, was indicted in August 2012 in Valencia County district court on four counts of criminal sexual penetration. He has proclaimed his innocence and is scheduled to go to trial in February 2014.

"We will seek justice in all criminal matters that come to our attention, regardless of whether the perpetrator is an inmate, offender, or staff member," said Corrections Secretary Gregg Marcantel.

Marcantel cleared Warden Romero following an internal investigation, finding he did not obstruct or interfere with an investigation into sexual abuse at CNMCF. "I would consider him exonerated," Commissioner Marcantel stated. ■

Sources: [www.kob.com](http://www.kob.com), [www.abqjournal.com](http://www.abqjournal.com), [www.lcsun-news.com](http://www.lcsun-news.com), [www.alamogordonews.com](http://www.alamogordonews.com)

### TYPING SERVICES

Provided since 1998

Specifically designed, with special rates for the incarcerated person.

Black / Color Printing and Copying

SEND A SASE FOR A "FREE" PRICE LIST AND MORE INFORMATION TO:

LET MY FINGERS DO YOUR TYPING

Sandra Z. Thomas (dba)

P O Box 4178

Winter Park, Florida 32793-4178

Phone: 407-579-5563

Special Offer: \$2.00 off first order.

Special offer void after: 12/31/2013

### Support Prison Legal News with these beautiful gifts!

CALL 561-360-2523, MAIL ORDER OR USE WEB FORM

[HTTP://WWW.PRISONLEGALNEWS.ORG/](http://WWW.PRISONLEGALNEWS.ORG/)



### Hand Embroidered Greeting Cards



Made by women prisoners in Cochabamba, Bolivia. Each card is individually made, no two are identical. The prisoners are paid a fair wage for each card and keep 100% of the pay to support themselves and their families. Local fair trade non-profits in Bolivia supply the materials for the cards. **\$6.**

**Hand Made Hemp Tote Bag** All natural hemp tote bag hand made in Vermont with the Prison Legal News logo on both sides, in red and black. Great for carrying books, groceries, and more! Stamped on the inside that no sweatshop, prison or child labor was used in its manufacture. **\$12.**

\$6 shipping and handling for orders under \$50.

# Ninth Circuit: Immigration Detainees Must be Afforded Opportunity to Challenge Continued Detention after Six Months

ON APRIL 16, 2013, THE NINTH CIRCUIT Court of Appeals affirmed a district court's grant of preliminary injunctive relief to immigration detainees in Southern California, affording them an opportunity to challenge their continued detention before an Immigration Judge after six months.

On any given day, Immigration and Customs Enforcement (ICE) detains over 33,000 immigrants while they await the conclusion of administrative and judicial proceedings that will determine whether or not they may lawfully remain in the United States. ICE's Los Angeles Field Office alone oversees the detention of more than 2,000 immigration detainees.

Alejandro Rodriguez and five other Southern California detainees filed suit challenging their prolonged detention, arguing that if they were not given an opportunity to seek review, in a neutral forum, of the government's justification for their continued imprisonment, "grave constitutional concerns" would result.

The district court certified the case as a class-action consisting of non-citizens within the Central District of California detained for longer than six months pursuant to one of two general immigration detention statutes. The court then entered a preliminary injunction requiring the government to provide each member of the class with a bond hearing before an Immigration Judge with the power to grant their release – subject to reasonable conditions of supervision – unless the government demonstrates by clear and convincing evidence that continued detention is justified because the detainee poses a danger to the community or is a flight risk.

The Ninth Circuit affirmed on appeal, holding that while the government is authorized by statute to detain deportable immigrants, the statutes at issue, 8 U.S.C. § 1226(c) (providing for the detention of certain criminal immigrants) and § 1225(b) (providing for the detention of arriving immigrants), could not permissibly be read to authorize prolonged detention without an individualized determination of dangerousness or flight risk.

Relying on Ninth Circuit precedent, the Court of Appeals held that, as a general matter, detention is considered "prolonged"

when it has lasted six months and is expected to continue more than minimally beyond that point. The appellate court noted that six months is more than sufficient time needed

to conduct removal proceedings, which typically last less than 50 days on average. See: *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013). ■

## Restitution Not Owed for Arrest Costs, West Virginia Court Holds

by Derek Gilna

PETITIONER MICHAEL JOHN MCGILL appealed his December 2010 state conviction for escape from home confinement while on bail and the sentencing judge's order that he pay \$8,261.56 in "restitution to the State for costs associated with apprehending him following his unauthorized departure from home confinement."

According to a decision by the Supreme Court of Appeals, "A group of thirty-seven law enforcement officers identified in the record as members of the West Virginia and Federal Fugitive Task Force undertook the recapture of Petitioner when it was discovered that he had fled West Virginia.... It took nine days for the task force to recapture Petitioner."

The Court disagreed with McGill's argument that he was on pretrial bail and not in formal custody of the county sheriff as part of the bail arrangement, noting that his crime of escape was statutory under West Virginia Code §§ 61-5-10 and 61-3-13. The Court did, however, concur that "the statute authorizing restitution does not contemplate the inclusion of the State

as a victim of crime. The State agrees and confesses error."

West Virginia's Victim Protection Act of 1984, §§ 61-11A-1 to 8 provides for restitution to victims of crime, but the trial court failed to heed the language of the statute that relates to bodily injury of individual victims, costs related to medical care and reimbursement for stolen or damaged property. "Clearly neither damage to society as a whole nor the cost of apprehension and investigation incurred by the government apprehending criminals are contemplated by this statutory language," the Supreme Court of Appeals wrote.

Rather, to recover pursuant to the restitution statute, the victim must be a "direct victim" under the doctrine of *State v. Lucas*, 201 W.Va. 271, 496 S.E. 2d 221 (W. Va. 1997).

The Court affirmed McGill's underlying conviction but reversed as to the restitution order, and remanded the case to the lower court for further proceedings. See: *State of West Virginia v. McGill*, 230 W.Va. 85, 736 S.E.2d 85 (W. Va. 2012). ■

## Discretionary Immunity Dismissal of Ohio Prisoner's Negligence Claims Reversed

ON MARCH 12, 2013, THE OHIO COURT of Appeals overturned an earlier discretionary immunity decision and reversed a lower court's dismissal of a prisoner's negligence claims on the basis of discretionary immunity.

Ohio Department of Rehabilitation and Correction (ODRC) prisoner Ron Foster suffers from various health problems, including a heart condition, a back injury and balance issues.

Dr. Asche, an ODRC employee at the Hocking Correctional Facility, issued a lower-bunk restriction for Foster from

August 17, 2009 to September 2, 2009. When he re-evaluated Foster on September 3, however, Dr. Asche did not renew the lower-bunk restriction.

Foster was moved to a top bunk on September 3, 2009 and fell from it later the same day. He claimed he suffered serious injuries as a result of the fall – including the "total loss of use of his right arm."

Foster filed a state court negligence action against the ODRC in September 2011, seeking damages of \$25,000. The trial court granted the ODRC's motion for summary

judgment, finding that Foster's claims failed as a matter of law because prison officials were entitled to discretionary immunity under *Brown v. Dept. of Rehab. & Corr.*, 2011 Ohio 3652 (Ohio Ct. App. 2011).

Foster appealed and the Ohio Court of Appeals reversed, overturning *Brown* and following the state Supreme Court's decisions in *Reynolds v. State Div. of Parole and Community Servs.*, 14 Ohio St.3d 68, 471 N.E.2d 776 (Ohio 1984) and *Semadini v. Ohio Dept. of Transp.*, 75 Ohio St.3d 128, 661 N.E.2d 1013 (Ohio 1996).

"Many state employees are called upon to exercise a high degree of discretion while working," the appellate court wrote. "Were we to find that discretionary immunity applies every time a state employee exercises discretion in performing his or her job, we would be vastly expanding the scope of the discretionary immunity doctrine while simultaneously limiting the scope of the state's waiver of sovereign immunity from liability as established by the Court of Claims Act. R.C. 2743.02(A)(1)."

Following *Reynolds*, the Court of Appeals noted that discretionary immunity

is available under Ohio law only upon a showing of "the exercise of a high degree of official judgment or discretion as to an executive or planning function involving the making of a basic policy decision."

The ODRC had failed to make the requisite showing, thus was not entitled to discretionary immunity as to Foster's negligence claims. See: *Foster v. Ohio Dept of Rehab. & Corr.*, 2013 Ohio App. LEXIS 812 (Ohio Ct. App. 2013).

Additional source: *Columbus Dispatch*

# WE NEED YOUR HELP!

**We are updating the Disciplinary Self Help Litigation Manual (Manville 2007) to help guide prisoners through the misconduct and disciplinary litigation process.**

**To effectively help inmates, we need case law and opinions from state courts that affect this process at the state level.**

**Please send us a copy of any decisions entered by a state court relating to prisoner misconduct/disciplinary actions.**  
(if copy cannot be made, please send original and we will return it at your request)

send all material to:

**Professor Daniel Manville, MSU College of Law**

**610 Abbot Rd., East Lansing, MI 48823**

(please do not send summaries, memos, or requests for representation)



**INMATE SHOPPER**  
2014  
READERS CHOICE  
RESULTS

OVER 1000 PRISONER RESOURCES  
NEW! WINNERS  
FREE ADS  
100 ORGS  
LGBT RESOURCES  
En Español

EVERY ISSUE CONTAINS:

- Zero Pen Pal Resources
- 400 Businesses Serving Prisoners
- 200 Non Profit Orgs for Prisoners
- 80 Designer Gift Stores
- Free Ad Space to Sell Your Stuff
- 15 Magazine Sellers
- 32 Sexy Photo Sellers
- and lots of ladies, too, BOP cool.
- Typist & Publishing Services

Pay to: Inmate Shopper  
P.O. Box 231 • Edna, TX 77957  
PRICE: \$17.99 + \$6 Priority Mail with Tracking #.

**America's  
Largest  
Up-To-Date  
Resources  
For Prisoners**

**\$14.98  
FREE  
Shipping**

**Bonus!  
100 Orgs  
en Español!**

**amazon.com**

Corrlinks:  
info@inmateshopper.com



**The Best 500**  
NON PROFIT ORGANIZATIONS  
For Prisoners & Their Families  
THIS IS AMERICA'S ONLY UP TO DATE  
COMPREHENSIVE, PRINT RESOURCE OF NON PROFIT ORGS  
SPECIFICALLY FOR PRISONERS  
Indexed by State, Name of Org and Subject  
Find the help and info you need Fast!

## Short-term Deprivation of Toilet Paper Does Not Violate Detainee's Rights

THE EIGHTH CIRCUIT COURT OF Appeals has held that denial of toilet paper to a pretrial detainee for a short period of time does not violate the Fourteenth Amendment. The ruling reversed a district court's order which had concluded the defendants were not entitled to qualified immunity.

James M. Stickley brought an action under 42 U.S.C. § 1983 claiming his constitutional rights were violated when he was incarcerated at Arkansas' Faulkner County Detention Center (FCDC). The district court granted the defendants qualified immunity on several claims, but not as to Stickley's claim that they had refused to give him adequate toilet

paper in violation of the Fourteenth Amendment (as Stickley was a pretrial detainee, his claims were brought under the Fourteenth rather than the Eighth Amendment).

From January to June 2010, Stickley was held at the FCDC awaiting trial. Pursuant to FCDC policy, he was issued only one roll of toilet paper per week; however, each week he exhausted his allotment before the week's end. His requests for additional toilet paper were denied as were his grievances. After his weekly roll of toilet paper was depleted, Stickley had to shower each time following a bowel movement. He often had to wait up to thirty minutes before being allowed to take a shower.

The Eighth Circuit concluded that "the amount of toilet paper afforded him, the limited time in which he went without toilet paper, and his ability to attend to his hygiene needs at those times" negated a finding that Stickley's constitutional rights were violated by the denial of additional toilet paper. The Court of Appeals noted that the facts alleged in this case were less severe than in *Harris v. Fleming*, 839 F.2d 1232 (7th Cir. 1988), which involved a deprivation of toilet paper for five days.

Accordingly, the district court's denial of qualified immunity to the defendants was reversed. See: *Stickley v. Byrd*, 703 F.3d 421 (8th Cir. 2013). ■

## Washington: No Public Funds for Deferred Prosecution Treatment Programs

THE EN BANC WASHINGTON STATE Supreme Court has held that the legislature did not intend to commit public funds to cover the full cost of treatment for indigent defendants participating in deferred prosecutions.

A Washington defendant charged with a misdemeanor offense may petition for de-

ferred prosecution if the crime was a result of substance abuse or mental illness; successful completion of a treatment program allows for dismissal of the charges.

RCW 10.05.130 requires appropriation of public funds "to provide investigation, examination, report and treatment plan for any indigent person who is unable to pay the cost of any program of treatment."

In separate cases, two defendants charged with driving while intoxicated petitioned Washington district courts for deferred prosecution. Both petitions were granted and, since the defendants were indigent, the courts approved the use of public funds to pay for their treatment programs.

A superior court vacated the funding orders, concluding that the plain language of RCW 10.05.130 authorizes public funds for "investigation, examination, report and

treatment plan," but not the cost of the treatment program.

The state Supreme Court granted review to determine whether the statute's use of the phrase "treatment plan" encompasses the full course of treatment.

Agreeing with the superior court, the Court found that RCW 10.05.130 is plain and unambiguous. A "treatment plan" is simply a document describing the plan of action for treatment," the Supreme Court wrote. Therefore, "the legislature did not intend to commit public funds for the full course of treatment for indigent defendants in deferred prosecutions." Presumably, then, defendants will have to fund the cost of their treatment programs themselves – which will be difficult for those who lack the financial resources to do so. See: *State v. Velasquez/Hutchison*, 176 Wn.2d 333, 292 P.3d 92 (Wash. 2013). ■

### Corcoran Sun

Full Color Prison Yard Monthly  
News ♦ Entertainment ♦ Resources

**3 Month Special Subscription**

**\$5 or 1 Book of FCS**

#### COLOR NEW 16 PAGES

Expanded full color format with exciting episodes of thrilling novels and sexy pics. Many how-to articles on writing, art and health. Filled with entertainment: puzzles, trivia, jokes, poetry... Submit your writing, art, poetry etc. See your submission, name and contact info in print.

**Special 6-Issue Subscription (\$10 or 2 Books FCS)**

**Special Full Year Subscription (\$20 or 4 Books FCS)**

Payments to: Freebird Publishers

Box 541- Dept. BK, North Dighton, MA 02764

[www.FreebirdPublishers.com](http://www.FreebirdPublishers.com)

[Diane@FreebirdPublishers.com](mailto:Diane@FreebirdPublishers.com)

### Actual Innocence

Explains how the innocent are convicted by faulty eyewitness testimonies, police perjury, expert witnesses, prosecutorial misconduct, etc., and how DNA testing is used to free the innocent.

\$16.00 from PLN's Book Store!

See page 61 for more information.

### Writing to Win

Need to write better? *Writing to Win* will teach you the basics of how to compose clear and convincing written and oral legal arguments! 270 pages packed with solid, practical advice and tips.

\$19.95 from PLN's Book Store!

See page 61 for more information.



# State of Washington Prison Phone Justice Campaign!

*Prison Phone Justice Project needs your help for statewide campaign!*

**W**hile much progress has been made in reducing the costs of long distance prison calls, we are still fighting to reduce the high costs of in-state prison and jail calls at the local level. In January 2014, the Human Rights Defense Center (HRDC), the parent organization of Prison Legal News, reopened its Seattle office to launch the Washington Prison Phone Justice Campaign.

This is our first statewide phone justice campaign, and we're excited to have people involved on both the local and national levels who are dedicated to ending the exorbitant phone rates and kickbacks associated with the prison phone industry. David Ganim, HRDC's national Prison Phone Justice Director, has already been obtaining the phone contracts and rates for all 39 county jails in Washington, as well as data from the Washington Department of Corrections.

We recently hired a local campaign director, Carrie Wilkinson, who will manage our office in Seattle and coordinate the statewide campaign. Washington prisoners and their families pay some of the highest phone rates in the nation, and we need your help to win this battle!

Here's how you can help – first, please visit the Washington campaign website:

**<http://nationinside.org/campaign/campaign-for-washington-prison-phone-justice>**

There you can see all the ways you can make a difference. The site allows you to sign up for the campaign and upload videos and share blog entries about how high prison phone rates make it difficult for you to stay in touch with your incarcerated loved ones. You can also upload an audio message, and even call in your story to **1-877-410-4863**, toll-free 24 hours a day, seven days a week! We need to hear how you and your family have been affected by high prison phone rates. If you don't have Internet access, you can mail us a letter describing your experiences and we'll post it. Send letters to HRDC's main office at: **HRDC, Attn: WA Phone Justice Campaign, P.O. Box 1151, Lake Worth, FL 33460**. Washington state prisoners can mail us letters and send a copy of this notice to their family members so they can get involved.

By choosing to participate in the Washington Prison Phone Justice Campaign, you will be playing a key role in ending the unfair phone rates that prisoners' families have to pay. We cannot win this battle without your help, so please visit the campaign website and share your experiences! Donations are also welcome and greatly appreciated, and can be mailed to the above address or made online via the campaign site. Thank you for your support!

# Jails Market Electronic Cigarettes to Prisoners

by Christopher Zoukis

**J**AIL ADMINISTRATORS HAVE FOUND A new revenue stream: exploiting prisoners' addiction to nicotine by selling them electronic cigarettes, or e-cigarettes, for a substantial profit.

Even as municipalities like Chicago, New York and Los Angeles enact restrictions on the sale of e-cigarettes, county jails across the country are peddling the nicotine vapor devices to prisoners. The profit margins on such sales can be as high as 400 percent.

At the Macon County Jail in Tennessee, Sheriff Mark Gammons buys Marlboro or menthol flavored e-cigarettes at \$2.75 each, then resells them for \$10. He said he had "taken pains" to not encourage smoking among prisoners, but budget problems led him to market e-cigarettes. He hopes to make \$20,000 to \$50,000 the first year, which will be used to increase the wages of jail staff; his guards earn a top salary of \$10.58 an hour. "I just want my boys to make as much as they can," Gammons said.

E-cigarettes use a small battery to heat a solution which produces a water vapor that is inhaled. Nicotine is the most popular additive. Manufacturers have noticed the trend of selling e-cigarettes to prisoners and now produce plastic, non-reusable versions that are deemed "jail-safe." Jails in at least seven states sell the devices at prices ranging from \$8 to \$30. Since most jails ban smoking, electronic cigarettes have proven popular among prisoners who crave a nicotine fix.

In September 2013, 40 state Attorneys General sent a letter to the U.S. Food and Drug Administration (FDA), urging it to regulate e-cigarettes in the same manner as regular cigarettes. The FDA is expected to announce some type of regulation in the near future.

Millard "Gus" Gustafson, the Sheriff of Gage County, Nebraska, said he was happy to offer e-cigarettes to prisoners. "I look at this as something to control their moods. And so if they're not a good boy or girl, I'm going to take them away, just like I do with the TVs," Gustafson said he sold out of the first 200 e-cigarettes he bought for his jail.

Not everyone is supportive of the trend. "I think having an e-cigarette and having

any influence of tobacco or nicotine in that jail is a horrible, terrible thing to do," remarked Gage County Supervisor Dennis Byars.

The American Lung Association said it was "deeply troubled" by the practice of using e-cigarettes as a moneymaker for jails. And Alex Friedmann, managing editor of *Prison Legal News*, noted that selling e-cigarettes was just another way to monetize the corrections system, and feeding prisoners' addiction to nicotine doesn't help them. "I think the fact remains [that] prisoners with other addictions, such as alcohol addiction, the jail is not providing [them] with beer and whiskey," he said.

"Prisoners with substance abuse addictions, such as Oxycodone, the jail is not providing them with that."

In October 2013, two Illinois counties – White and Saline – began selling e-cigarettes to prisoners in their jails. "I think it's a trend all counties will eventually adopt," stated White County jail administrator Randy Cobb.

Thus far, no state prison systems are offering e-cigarettes. ■

Sources: <http://journalstar.com>, <http://qctimes.com>, [www.actionsf.org](http://www.actionsf.org), [www.johnsoncitypress.com](http://www.johnsoncitypress.com), [www.nytimes.com](http://www.nytimes.com), [www.wbir.com](http://www.wbir.com), [www.wsmv.com](http://www.wsmv.com)

## Justice Department Reports: Correctional Populations Declining at Slower Pace

by Derek Gilna

**T**HE BUREAU OF JUSTICE STATISTICS has published two new reports, "Correctional Populations in the United States, 2012" and "Probation and Parole in the United States, 2012." Both indicate that although correctional populations continue to drop, the rate of decrease has slowed.

Approximately 6.9 million people were under correctional supervision in the U.S. in 2012, including prison, jail, probation and parole – a decrease of 51,000 from the previous year. This means that about 1 in 35 adults were under some form of correctional supervision, or 2.9% of the adult U.S. population.

A modest decline in the number of people held in state prisons marked the fourth year in a row that the prisoner population had dropped, with the largest single decrease occurring due to a reduction in California's prison system pursuant to court-ordered reforms. As a result of the California Public Safety Realignment Act of 2011, that state had 28,700 fewer prisoners in 2012 than it did the year before – which accounted for more than half the drop in the national correctional population.

Regardless, the two Bureau of Justice Statistics reports, released in December 2013, highlighted America's continued

emphasis on mass incarceration – finding that 2.2 million people were held in prisons and jails, 3.94 million were on probation and around 851,200 were on parole.

Those figures should be of interest to lawmakers as they try to understand why their correctional budgets remain so high.

Further, approximately 128,300 people were incarcerated in privately-operated state and federal facilities nationwide, the federal prison population increased in 2012 to almost 217,000 prisoners, and the total jail population increased slightly.

On a positive note, the probation and parole report found that 58% of parolees successfully completed their terms of parole or were discharged early in 2012, while 68% of probationers completed their terms of supervision or were discharged early.

In summary, both reports show that while the number of people incarcerated and under parole or probation supervision has dropped over the past several years, the rate of decline has slowed and the total correctional population remains exceedingly high – indicating there is still much work to be done to reduce the human costs and negative impact of our nation's criminal justice system. ■

Source: [www.bjs.gov](http://www.bjs.gov)

# Crime Declines while Anti-crime Funding Increases

by Christopher Zoukis

CRIME IS DOWN IN THE UNITED STATES, but spending measures included in the \$1.1 trillion federal budget passed by Congress in January 2014 will ensure that many law enforcement agencies receive more funding.

Insiders give much of the credit for the fiscal year (FY) 2014 funding increases to Senate Appropriations Committee Chairwoman Barbara Mikulski, who is known as a strong proponent of crime-fighting expenditures. Senator Mikulski said the expanded funding represents a “truly bipartisan agreement that a significant number of members [of Congress] worked night and day [on] over the holidays.”

The big winners in federal law enforcement spending include the FBI, which received \$8.3 billion, an increase of \$248.7 million over FY 2013, and the federal Bureau of Prisons, which received \$6.77 billion – an increase of \$90.2 million.

The Bureau of Alcohol, Tobacco, Firearms and Explosives is also getting a boost in funding with a budget of \$1.18 billion – more than \$49 million over last year.

Little was said about how these funding increases square with the most recent federal statistics on crime, which reflect a decade-long downward trend. Indeed, even as legalization of medical marijuana becomes more commonplace across the nation (as well as legalization of marijuana for recreational use in Washington state and Colorado), the Drug Enforcement Agency’s \$2.02 billion budget includes an increase of \$9.6 million.

Critics of additional spending on law enforcement note there are few controls in place to monitor the use of federal funds that end up in state and local coffers through programs such as Byrne-JAG grants for police agencies – which received \$367 million in funding in the FY 2014 federal budget – and the COPS community policing program, funded at \$214 million.

Byrne-JAG grants frequently fund multi-jurisdictional task forces that have little accountability and have been linked to abuses like the mass arrests of black defendants in Tulia, Texas on fabricated drug charges. As funding is often tied to “performance” metrics, programs like HIDTA (High Intensity Drug Trafficking Area) grants encourage police to devote an inordinate amount of resources to those initiatives

so as to inflate their arrest numbers.

The COPS program has no real controls or accountability either, and instead of such grants being used to put officers on the street, some jurisdictions have used them in whatever manner they want. Criminologist Peter Kraska has reported that “community policing” funds have been used for paramilitary SWAT teams, roadblocks and stop-and-frisk policies.

Notably, federal law enforcement expenditures have increased not only as crime rates and prison populations have dropped, but also as court budgets have declined and public defenders’ offices have laid off employees due to lack of funding. ■

Sources: [www.thecrimereport.com](http://www.thecrimereport.com), [www.washingtonpost.com](http://www.washingtonpost.com)

**PRISON INMATES ONLINE**  
Home | Sort Inmates | Photo/Video | Inmate Writings | Community | Services | Forum

**Actual Profile Layout**

**John Inmate #12345**  
Prison Correctional Facility  
123 Any St  
Cell #1 Bed #1  
Anywhere, CA 12345

**Map**

**BEST VALUE**  
Among Prison Websites

**Get PEN-PALS**  
by posting YOUR  
profile **ONLINE!**  
\$50 Lifetime Profile  
\$10 Mini Profiles

**FEATURED INMATES**  
Inmate Inmate Inmate  
Inmate Inmate Inmate

**GET MAIL**  
@  
Our Message Service let's people send you messages directly through your profile. We collect messages you receive and mail them to you each week. \*Service Not available in all prisons.

**Helping Inmates Since 2000**

**BLOGS POETRY**  


**PHOTOS ARTWORK TATTOO PICS VIDEOS LEGAL DOCS**  


**Our Social Network Includes:**  


**For a FREE brochure/application:**  
Send a Self Addressed Stamped Envelope (Size #10) or 2 first class stamps to:  
**PRISON INMATES ONLINE**  
#PLN Brochure  
8033 W Sunset Blvd #7000  
Los Angeles CA 90046

**We cannot send brochures to STATE inmates in: FL, MO, PA, or VA. Message Service available in facilities that allow 3rd party mail. NY State Inmates are prohibited from Message Service.**

## News in Brief

**Alaska:** Prisoners in the segregation unit at Spring Creek Correctional Center were not happy with an inspection order that required them to make their beds and clean their cells. On August 5, 2013, around 14 prisoners showed their displeasure by yelling, breaking porcelain sinks and toilets, and flooding cells. Only one guard was on duty in the 32-man unit at the time. The Alaska Correctional Officers Association blamed the disturbance on chronic understaffing at the facility.

**Arkansas:** Glenda Estell, the mother of a prisoner who escaped from the Garland County Detention Center, was accused of assisting in the jailbreak and arrested on August 2, 2013. Police listened to 40 recorded phone calls to connect Estell to her son's July 28 escape. She was one of a network of several friends and family members who orchestrated the escape of jail prisoner Derrick Estell; a girlfriend, Tamara Upshaw, and her stepfather, William Harding, helped with a getaway car and a diversion to distract deputies. Derrick Estell and Upshaw were captured in Florida

on August 23, 2013.

**Australia:** A guard who worked at the Dame Phyllis Frost Center, a maximum-security women's prison in Melbourne, told a prisoner's husband that he would "stash" something for his wife. As a result of that transaction, on August 30, 2013, Victorian County Court Judge Bill Stuart sentenced guard Ayhan Soylemez, 42, to two years and three months in prison for misconduct in public office. Judge Stuart said Soylemez had committed a gross breach of his duties, and noted that as a former prison guard his incarceration would be harsher. Two drug possession charges against Soylemez were dismissed.

**Bolivia:** A child was among 29 people killed in a violent clash among prisoners at the maximum-security Palmasola Penitentiary Complex outside Santa Cruz. On August 23, 2013, an explosion and the sound of gunfire were heard inside the facility as rival cell blocks fought for control of part of the prison; 35 people reportedly suffered injuries and were evacuated to local hospitals. Children routinely live with

incarcerated family members in Bolivian prisons.

**California:** David John Calmere died at the scene of a July 18, 2013 accident after he led police on a high-speed chase through San Benito County. The 41-year-old prison guard employed at the Correctional Training Facility in Soledad lost control

of his Toyota Tundra, hit both the right and left guard rails, then rolled the vehicle and was ejected. Calmere had fled from police when he was pulled over for speeding.

**Connecticut:** On July 25, 2013, the Associated Press reported that a routine state audit of benefits uncovered troubling information about Kevin Hornak, 50, a guard at the Bridgeport Correctional Center. Two women presented investigators with valid marriage certificates, and Hornak was charged with bigamy. Police reported that both wives knew each other but each believed she was the only one who was legally married. Hornak wed his first wife in 1984 in Philadelphia, and had assured his second wife that he was divorced when he married her in 2005 in Vermont.

**Florida:** A bet on a basketball game between two groups of juvenile offenders at the Avon Park Youth Academy devolved into a full-blown riot on August 18, 2013. The two groups of boys, from Orlando and St. Petersburg, had made a bet on the game for three packages of Cup O'Noodles. "The Orlando team won and the St. Pete team didn't pay up, so the original 10 started fighting," Sheriff Grady Judd said. Other teens joined in the brawl, which resulted in hundreds of thousands of dollars in damage to the facility. Approximately 150 law enforcement officers were needed to quell the disturbance.

**Florida:** On July 29, 2013, Richard Stotts, 48, was fired from his job as a Pinellas County detention deputy. Stotts was working in the booking area of the jail on May 8 when he abruptly smacked prisoner David Alan Koons on the head and neck, eventually pinning him to the ground. The incident was recorded on surveillance video. Stotts had been the subject of previous

### Help From Outside, For Humanity Inside.

*Offering basic services on the outside.*

Help From Outside understands what you're going through. We can help you accomplish the things you need to get done but can't.

We offer:

- High standards & ethics
- Timely & professional services
- Personal touch

"HFO has excellent business etiquette and ethics."  
- T. Brown

"I like that you sent a personal letter. HFO is more personable than your competitors."  
- A. Mitchell

**WE'VE MOVED! PLEASE CONTACT US AT OUR NEW ADDRESS:**

For a brochure and application please send a SASE to:  
Help From Outside | 2620 Bellevue Way NE #200 | Bellevue, WA 98004  
206.486.6042 | [www.helpfromoutside.com](http://www.helpfromoutside.com)

### CORRECTION NOTICE!

In the January 2014 issue of *PLN*, the article "FCC Rate Caps on Prison Phone Calls to Impact Nevada DOC's Budget" on page 47 incorrectly stated that the FCC's order capping interstate prison phone rates will go into effect on February 13, 2014. The correct date when the order will go into effect is February 11, 2014. For additional information, see the update on the Campaign for Prison Phone Justice in this issue of *PLN*.



investigations into improper conduct involving prisoners; he was not charged with assaulting Koons, because Koons declined to cooperate with investigators. This was the third time in a less than a year that a Pinellas County jail guard was fired for using excessive force.

**Georgia:** A former prison guard who pleaded guilty to smuggling phones and cigarettes into the Augusta State Medical Prison received probation and a harsh lecture from Richmond County Superior Court Judge Daniel Craig. Melissa L. Brown, 34, was charged with trading with inmates after a dog alerted to her vehicle during a search of prison employees. Judge Craig called Brown's misconduct a "treasonous deed" before sentencing her on August 29, 2013 to five years' probation under the First Offender Act. She also must perform 300 hours of community service and pay a \$3,000 fine.

**Illinois:** An August 8, 2013 road rage incident resulted in murder charges being filed against a Cook County jail guard. Police say 23-year-old Montrel Moss threw a cup of water that hit a van being driven by jail guard Edgar Singleton, Jr. Singleton retaliated by shooting Moss in the neck with a 9mm handgun; Moss was pronounced dead a short time later. According to a statement from the Cook County Sheriff's Office, Singleton was subsequently de-deputized and fired.

**Indiana:** A report filed by Marion County jailers stated that on August 1, 2013, an unidentified 24-year-old Indiana

Department of Child Services (DCS) worker flashed her official ID to gain access to the Marion County Arrestee Processing Center in order to get some "alone time" with a prisoner. The female DCS employee was escorted to a meeting room where jail staff said they saw her and the prisoner engage in unauthorized physical contact, including touching and holding hands. Upon questioning, the DCS worker admitted she had no official business at the jail; her badge was confiscated and she was ordered to leave. No criminal charges were filed, but she was fired in connection with the incident.

**Indonesia:** About 300 soldiers and 500 policemen were deployed around the Tanjung Gusta prison in Medan, the capital of North Sumatra, after a riot broke out on July 12, 2013. The facility, with a normal capacity of 1,054, was holding nearly 2,600 prisoners at the time. Five people were killed and hundreds of prisoners, including convicted terrorists, escaped during the riot. The disturbance was apparently triggered by a power outage that disabled the facility's water pumps and left prisoners without water. Akbar Hadi, a spokesman for prison officials, estimated that about 500 prisoners had resisted orders to stop rioting before security forces retook the facility.

**Iowa:** Rodney Eugene Long, 38, escaped from the Clarinda Correctional Facility on August 19, 2013 and shot a Taylor County deputy after stealing a gun in a residential burglary. The wounded deputy's survival was credited to his protective vest.

After leading police on a 40-minute chase, Long broke into the home of a retired prison guard and his wife, Jerome and Carolyn Mauderly, ages 71 and 66. Long held the Mauderlys hostage for several hours before Jerome Mauderly killed him using a shotgun.

**Kansas:** An unidentified guard at the El Dorado Correctional Facility fell from a watch tower at the prison on July 12, 2013. According to Kansas DOC Communications Director Jeremy Barclay, the state's Workers Compensation Law prohibits the release of the guard's name. The guard was alert and talking when taken to a Wichita hospital, and was treated and released less than four hours after the accident. According to Barclay, the tower was secured with proper railings.

**Kansas:** Former Sedgwick County jail guard David Kendall, 23, was charged with crimes ranging from aggravated sodomy to misdemeanor sexual battery for raping two prisoners and sexually propositioning four others. The prisoners have collectively filed claims totaling over \$20 million against the county. Kendall posted \$500,000 bond and was released from jail with a GPS monitoring system. At an August 30, 2013 hearing, testimony was presented that one of the prisoners accusing Kendall of rape had had consensual sex with him, then fabricated the rape claim to cash in on a civil suit.

**Kazakhstan:** On August 29, 2013, a military court sentenced a group of prison guards, including a high ranking official, who had been convicted of torturing a



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription!

Quarterly drawing WINS \$100! (Void in New York)

(Last Quarter's winner from Somers, CT.)

TELL YOUR FRIENDS! ACT NOW!!



PO Box 2063 • Fort Walton Beach FL. 32549

[www.InmateMagazineService.com](http://www.InmateMagazineService.com)

## Inmate Magazine Service

## News In Brief (cont.)

prisoner to death at a labor camp in the city of Zhezkazgan. The court found that the guards had beaten a prisoner for hours, then crucified the dying man on a metal fence in October 2012. Ten guards received five-year prison terms, some of which were suspended, while three received sentences of six years each. Human rights activists have long protested prisoners' rights abuses in Kazakhstan.

**Maine:** Shane Thomas, an Androscoggin County jail guard, filed suit against the county and Sheriff Guy Desjardins on August 15, 2013 after being cleared in a use-of-force incident. According to the lawsuit, Thomas was suspended for three days and as a result of the suspension suffered damage to his professional reputation and continues to suffer professional and personal injuries. A prisoner had filed a complaint after being involved in a physical confrontation with Thomas, but the district attorney decided that Thomas' use of force was justified. Sheriff Desjardins said he stood by the suspension because Thomas struck the prisoner in the head in violation of jail rules.

**Michigan:** Former Michigan DOC employee Michael Paul Salyers pleaded no contest on August 2, 2013 to a lesser charge of fourth-degree criminal sexual conduct; he was originally charged with two counts

of second-degree criminal sexual conduct of a state prisoner. Police said that since 2006, Salyers had a sexual relationship with a female prisoner who has since been released. At the time, Salyers was a mechanic at the now-closed Camp Brighton facility.

**Michigan:** On August 6, 2013, a jury returned a not guilty verdict in the trial of Lansing jail guard David Gladstone, who was charged with misdemeanor assault and battery of a prisoner. Although Gladstone was found not guilty, an internal investigation is pending to determine whether he violated any departmental policies or procedures. He had been suspended pending the outcome of the criminal charge. [See: *PLN*, Dec. 2013, p.56].

**Minnesota:** A nurse working for a private medical contractor, Advanced Correctional Healthcare/Diamond Pharmacy Services, was charged with illegally obtaining prescriptions for oxycodone for personal use by using the names of prisoners in her care at the Isanti County Jail. Cara Sue Lindgren was charged with felony fifth-degree drug possession and felony fifth-degree drug possession by fraud or deceit on August 9, 2013. An investigation into wrongdoing at the jail remains ongoing.

**New York:** "I want you to knock his fucking teeth in." According to a June 26, 2013 report by the *New York Daily News*, that was what supervising warden Eliseo Parez allegedly told a team of Rikers Island

guards. The team, which had been tasked with reducing violence at the jail, viciously attacked prisoner Jamal Lightfoot after he looked at one of them "funny." Prosecutors said the brutal beatdown – which knocked out some of Lightfoot's teeth and broke his eye sockets and nose – led the guards to try to cover up the assault. Sanford Rubenstein, Lightfoot's family lawyer, said prisoners at Rikers Island are not safe and that the incident was part of a "systemic problem" at the facility. The guards involved in Lightfoot's beating have pleaded not guilty.

**New York:** A violent, bloody brawl broke out among rival gangs – the Trinitarians and the Crips – at Rikers Island on August 22, 2013. As many as 50 prisoners were involved in the melee, which was reportedly triggered over the use of a hot plate to cook a grilled cheese sandwich. The fight lasted nearly an hour and eleven prisoners and a guard were injured. In surveillance video, prisoners were seen attacking each other with mop handles and hurling chairs; one prisoner also threw hot water, and several suffered serious stab wounds.

**New Zealand:** For 13 years, Roger Brooking had entered New Zealand prisons to conduct drug and alcohol assessments. In July 2013, however, he was banned from visiting Rimutaka Prison after he criticized the DOC for a multi-million dollar cell phone call blocking system that he deemed a "failed strategy." The DOC alleged that he had "breach[ed] prison security" by using

## PLN Classifieds

### Ibrahim Books & Gifts

PO Box 4141, Phila, PA 19144  
Ph.267-586-3309 [ibrahimbooks.com](http://ibrahimbooks.com)  
\*Islamic Gift Baskets\*CD's\*DVD's  
Quality Service\*Affordable Rates  
Write for FREE catalog  
Your resource for authentic books  
According to The Qur'aan & Sunnah

### Want Quality Pictures of

Quality Babes? 4x6 High Res pics  
Send self addressed stamped  
envelope for free catalog!  
PHOTO TRYST  
PO Box 103  
Chapmansboro TN 37035

### AMBLER DOCUMENT PROCESSING

Type, Design and Prepare  
Manuscripts for Self-Publishing  
Reasonable Rates!-Accept all Genres!  
P.O. Box 938, Norwalk, CT 06852

### The VOICES.CON Newsletter – Free

Written by lifers for lifers. For info on how  
to receive Voices.Con monthly, send  
SASE to: PO Box 361, King City, CA 93930.  
On the web at: [VoicesDotCon.org](http://VoicesDotCon.org);  
Email: [Publisher@VoicesDotCon.org](mailto:Publisher@VoicesDotCon.org)

### IF YOU WANT THE BEST TRY EPS!

Legal Research & Forms, Internet  
& People Searches, Amazon Books,  
Erotic Photos, PenPals, Special  
Requests and More. Send SASE to:  
Elite Paralegal & Prisoner Services  
PO Box 1717, Appleton, WI 54912

### Hepatitis & Liver Disease: A Guide to Treating & Living with Hepatitis & Liver Disease

Revised ed. By Dr. Melissa Palmer  
See page 61 for more information.

### CHRISTIAN PRISON PEN PALS/ OUTLAWS ONLINE, PO Box 333,

Inverness, Florida 34451. Checks/M.O.  
payable to Inmate Services Request Infor-  
mation Photo, Desc., 400 word bio \$25

### PUZZLE BOOKS & EYE GLASSES

Brochure & Free Gifts  
Send 2 Forever Stamps or \$1.00  
Mara Worldwide  
115 W. California Blvd Ste 424-R  
Pasadena, CA 91105

his personal cell phone in the parking lot of the facility.

**Ohio:** August 14, 2013 marked the grand opening of a new rainbow trout farm at the Southeastern Correctional Complex in Lancaster. The fish are destined for the Columbus Zoo, where about 300 pounds a month will be used to feed the zoo's penguins. Another 100 pounds will be fed to polar bears, brown bears and otters. The trout will replace fish the zoo currently purchases from another state, and the project is funded by the prison's recycling program.

**Oregon:** Joseph Akins, Jr., 45, serving time for kidnapping, rape and murder, was killed in his cell at the Oregon State Penitentiary on August 17, 2013. Prison officials said Akins was found dead in C-block and the facility was immediately placed on lockdown. A medical examiner ruled that Akins died due to "inflicted trauma," and state police said the suspect in his death is his cellmate, Craig Dennis Bjork, 53, who had been convicted of 5 previous murders, including killing another prisoner in 1997.

**Rhode Island:** On July 18, 2013, Gaulter Botas, a former guard at the Rhode Island Adult Correctional Institute, received an 18-month prison sentence. Botas

had assaulted prisoners by hitting one with a telephone book and another with a plastic clipboard, a package of paper, a bag of food and his closed fist. Four prisoners said they were assaulted by Botas and another guard, Kenneth Viveiros. Botas' conviction was upheld in April 2013 by the Rhode Island Supreme Court, and a superior court judge rejected his motion for a reduced sentence. In 2006, Botas and Viveiros were among a number of guards named in a lawsuit alleging that they had made a prisoner eat his own feces; that suit settled for \$120,000. [See: *PLN*, Aug. 2007, p.28].

**Romania:** On July 30, 2013, a committee requested that the general prosecutor file charges against 87-year-old former prison commander Alexandru Visinescu for the deaths of six prisoners. Romania had communist governments from 1945 until 1989, and from 1956 to 1963 Visinescu ran the Ramnicu Sarat prison, notorious for its incarceration of Romania's pre-communist political leaders and intellectuals. The committee alleged the six prisoners had died from beatings, hunger, lack of medical treatment and exposure to cold. Visinescu rejected the accusations and entered a plea of innocence at a closed hearing in January 2014.

**Switzerland:** The consumption of cannabis is strictly prohibited in Switzerland, but is treated as less of a criminal priority than in the U.S. According to a study published on June 17, 2013 by the International Journal of Drug Policy, as many as 80% of Swiss prisoners use cannabis with the full awareness of prison staff. Prisoners and staff reported that it has a positive effect and named several benefits of cannabis consumption. Prison officials believe that cracking down on marijuana use would lead to an increase in violence, and said it is a relatively safe and peaceful drug.

**Tennessee:** According to officials at the West Tennessee State Penitentiary, transport guard Lonnie B. Rogers was arrested for bringing 40 cell phones and chargers, 22 ounces of marijuana and tobacco into the facility. Rogers reportedly received \$700 from a woman to smuggle marijuana to prisoner Ronnie Henry. In an August 1, 2013 statement, TDOC Commissioner Derrick Schofield said, "This case demonstrates our commitment to zero tolerance of illegal contraband that threatens the security of our prisons."

**Texas:** One victim of former 404<sup>th</sup> State District Judge Abel Corral Limas presented impact testimony saying there

#### **MIDNIGHT EXPRESS BOOKS**

Helping inmate authors publish books. You'll always get more than you pay for with us. If you have not been to our website please check us out. PO Box 69 Dept. PLN Berryville AR 72616 midnightexpressbooks.com

#### **Love Through Gifts**

And we make buying gifts fun. Find out about our popular gift services by contacting us today. Receive your free catalog; INTiMATE LOVE, LLC PO BOX 1153, New York, NY 10039 info@intimatelovegifts.com

#### **Education Behind Bars Newsletter**

A free, educational newsletter of interest to incarcerated students. Write to be added to the mailing list: EBBN Editor 3900 Pelandale Avenue, Box 319 Modesto, CA 95356 www.PrisonEducation.com

#### **SURROGATE SISTERS**

Celebrating 18+Years in Business No Games. We Sell Photos of Sexy Women, Gifts for Loved Ones, Erotic Stories & Pen-Pal Service Free Info & Flyer Send SASE to: Surrogate Sister - PN PO Box 95043, Las Vegas NV 89193

#### **Prisonerinmatefamilyservice.com**

Send a SASE for a free catalog; PO Box 1852 Pismo Beach, CA 93448 We buy stamps- 7.50 a book; Single stamps .25 cents; Amazon Orders, copies of photos/artwork And SO much more! FamilyInmateSev@aol.com

#### **LOCAL PHONE NUMBERS \$2.50/MO.**

USA anywhere 5¢/min. To MX 15¢ Great rates all over the world! No signup fee, no hidden fees! Refer new cust, 300 free mins! [www.FreedomLine.net](http://www.FreedomLine.net) to sign up or write FreedomLine, Box 7-WCB C'ville IN 47331. Save BIG \$\$\$!

#### **A DEGREE/ORDINATION FROM PRISON**

Correspondence Courses via mail INT'L CHRISTIAN COLLEGE&SEMINARY PO BOX 530212 Debary, FL 32753-0212 Associates thru PhD credit for Life Experience \*ACCREDITED\* Tuition as Low as \$19.95 a month Send SASE for a Free Evaluation

#### **Celebrity Photos For Sale:**

Send self addressed stamped envelope for lists. Name stars you would like to order photos of. Start your collection today! Photoworld-PLN PO Box 401016 Las Vegas, Nv. 89140

#### **#1 PHOTO FORWARDING SERVICE**

**\*\*SPECIAL\*\*** \$25.00 for 60 Photos! Email & Text your photos 2 us We Print & Mail them 2 YOU! [www.Infolincs.com](http://www.Infolincs.com) (4 more info) Email: [infolincs@centurylink.net](mailto:infolincs@centurylink.net) Check/\$\$ Order: InfolINCS, LLC PO Box 644, Shady Cove, OR 97539

was “outrage and shock at the magnitude of the corruption” committed by the disgraced judge, who entered a guilty plea to racketeering charges. In exchange for his plea, Limas was sentenced on August 21, 2013 to 72 months in federal prison, restitution of \$6,777,270.50, three years of supervised release following his prison term and forfeiture of an additional \$257,300 from proceeds from his criminal enterprise. Limas admitted that he routinely used his

position as judge to enrich himself and others through extortion, and that his conduct was “not a mistake, it was intentional.”

**Texas:** Two former state prison guards at the Giles W. Dalby Unit face bribery charges, according to court documents filed in federal court in Lubbock. In separate incidents, Philip Andrew Tyler was accused of providing cocaine to a prisoner in exchange for money, while Cesar Ceja was charged with giving tobacco to a prisoner in exchange for a candy bar. Tyler and Ceja were charged on July 2, 2013.

**Texas:** In August 2013, a Texas billion-

aire under house arrest in his south Florida mansion awaiting retrial on a drunk driving manslaughter charge was allowed to fly by private jet to visit his dying mother at a Texas hospital. John Goodman’s original conviction was overturned because a juror had not revealed that his wife had once been arrested on a DUI charge. Goodman was initially approved to make the trip to Texas on a commercial flight escorted by four deputies, but was later allowed to travel via chartered plane. County officials said Goodman was responsible for all travel costs, meals and lodging related to the trip. ■

## **Criminal Justice Resources**

### **ACLU National Prison Project**

Handles state and federal conditions of confinement claims affecting large numbers of prisoners. Publishes the NPP Journal (available online at: [www.aclu.org/national-prison-project-journal-fall-2011](http://www.aclu.org/national-prison-project-journal-fall-2011)) and the Prisoners’ Assistance Directory (write for more information). Contact: ACLU NPP, 915 15th St. NW, 7th Fl., Washington, DC 20005 (202) 393-4930. [www.aclu.org/prisons](http://www.aclu.org/prisons)

### **Amnesty International**

Compiles information about prisoner torture, beatings, rape, etc. to include in reports about U.S. prison conditions; also works on death penalty issues. Contact: Amnesty International, 5 Penn Plaza, New York NY 10001 (212) 807-8400. [www.amnestyusa.org](http://www.amnestyusa.org)

### **Center for Health Justice**

Formerly CorrectHELP. Provides information related to HIV in prison – contact them if you are not receiving proper HIV medication or are denied access to programs due to HIV status. Contact: CHJ, 900 Avila Street, Suite 102, Los Angeles, CA 90012. HIV Hotline: (214) 229-0979 (collect calls from prisoners OK). [www.centerforhealthjustice.org](http://www.centerforhealthjustice.org)

### **Centurion Ministries**

Works to exonerate the wrongfully convicted, in both cases involving DNA evidence and those that do not. Centurion only takes 1-2 new cases a year involving actual innocence. They do not consider accidental death or self-defense murder cases, he said/she said rape cases, or child abuse or child sex abuse cases unless there is physical evidence. All case inquiries must be from the prisoner involved, in writing. Contact: Centurion Ministries, 221 Witherspoon Street, Princeton, NJ 08542 (609) 921-0334. [www.centurionministries.org](http://www.centurionministries.org)

### **Critical Resistance**

Seeks to build an international movement to abolish the Prison Industrial Complex, with offices in Florida, California, New York, Texas and Louisiana. Publishes The Abolitionist newsletter. Contact: Critical Resistance, 1904 Franklin Street #504, Oakland, CA 94612 (510) 444-0484. [www.criticalresistance.org](http://www.criticalresistance.org)

### **The Exoneration Project**

The Exoneration Project is a non-profit organization dedicated to working to free prisoners who were wrongfully convicted. The Project represents innocent individuals in post-conviction legal proceedings; typical cases involve DNA testing, coerced confessions, police misconduct, the use of faulty evidence, junk science and faulty eyewitness testimony, and ineffective assistance of counsel claims. Contact: The Exoneration Project, 312 North May Street, Suite 100, Chicago, Illinois 60607 (312) 789-4955. [www.exonerationproject.org](http://www.exonerationproject.org)

### **Family & Corrections Network**

Primarily provides online resources for families of prisoners related to parenting, children of prisoners, prison visitation, mothers and fathers in prison, etc. Contact: F&CN, 93 Old York Road, Suite 1 #510, Jenkintown, PA 19046 (215) 576-1110. [www.fcnetwork.org](http://www.fcnetwork.org)

### **FAMM**

FAMM (Families Against Mandatory Minimums) publishes the FAMMgram three times a year, which includes information about injustices resulting from mandatory minimum laws with an emphasis on federal laws. Recommended donation of \$10 for a subscription. Contact: FAMM, 1612 K Street NW #700, Washington, DC 20006 (202) 822-6700). [www.famm.org](http://www.famm.org)

### **The Fortune Society**

Provides post-release services and programs for prisoners in the New York City area and occasionally publishes Fortune News, a free publication for prisoners that deals with criminal justice issues, primarily in New York. Contact: The Fortune Society, 29-76 Northern Blvd., Long Island City, NY 11101 (212) 691-7554. [www.fortunesociety.org](http://www.fortunesociety.org)

### **Innocence Project**

Provides advocacy for wrongly convicted prisoners whose cases involve DNA evidence and are at the post-conviction appeal stage. Maintains an online list of state-by-state innocence projects. Contact: Innocence Project, 40 Worth St., Suite 701, New York, NY 10013 (212) 364-5340. [www.innocenceproject.org](http://www.innocenceproject.org)

### **Just Detention International**

Formerly Stop Prisoner Rape, JDI seeks to end sexual violence against prisoners. Provides counseling resources for imprisoned and released rape survivors and activists for almost every state. Contact: JDI, 3325 Wilshire Blvd. #340, Los Angeles, CA 90010 (213) 384-1400. [www.justdetention.org](http://www.justdetention.org)

### **Justice Denied**

Although no longer publishing a print magazine, Justice Denied continues to provide the most comprehensive coverage of wrongful convictions and how and why they occur. Their content is available online, and includes all back issues of the Justice Denied magazine and a database of more than 3,000 wrongly convicted people. Contact: Justice Denied, P.O. Box 68911, Seattle, WA 98168 (206) 335-4254. [www.justicedenied.org](http://www.justicedenied.org)

### **National CURE**

Citizens United for Rehabilitation of Errants (CURE) is a national organization with state and special interest chapters that advocates for rehabilitative opportunities for prisoners and less reliance on incarceration. Publishes the CURE Newsletter. \$2 annual membership for prisoners. Contact: CURE, P.O. Box 2310, National Capitol Station, Washington, DC 20013 (202) 789-2126. [www.curenational.org](http://www.curenational.org)

### **November Coalition**

Publishes the Razor Wire, a bi-annual newsletter that reports on drug war-related issues, releasing prisoners of the drug war and restoring civil rights. A subscription is \$10 for prisoners and \$30 for non-prisoners. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 684-1550. [www.november.org](http://www.november.org)

### **Prison Activist Resource Center**

PARC is a prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, able-ism, heterosexism and classism, specifically within the Prison Industrial Complex. PARC produces a free resource directory for prisoners, and supports activists working to expose and end the abuses of the Prison Industrial Complex and mass incarceration. Contact: PARC, P.O. Box 70447, Oakland, CA 94612 (510) 893-4648. [www.prisonactivist.org](http://www.prisonactivist.org)



# Prison Legal News Book Store

Fill in the boxes next to each book you want to order, indicating the quantity and price. Enter the Total on the Order Form on the next page.  
**FREE SHIPPING on all book / index orders OVER \$50 (effective 9-1-2013 until further notice). \$6.00 S/H applies to all other book orders.**

## SUBSCRIBE TO PLN FOR 4 YEARS AND CHOOSE ONE BONUS!

1. **SIX (6) FREE ISSUES FOR 54 TOTAL! OR**
2. **PRISON PROFITEERS (A \$24.95 VALUE!) OR**
3. **WITH LIBERTY FOR SOME (AN \$18.95 VALUE!)**

**Prison Profiteers**, edited by Paul Wright and Tara Herivel, 323 pages. **\$24.95.** This is the third book in a series of Prison Legal News anthologies that examines the reality of mass imprisonment in America. *Prison Profiteers* is unique from other books because it exposes and discusses who profits and benefits from mass imprisonment, rather than who is harmed by it and how. 1063

**With Liberty for Some: 500 Years of Imprisonment in America**, by Scott Christianson, Northeastern University Press, 372 pages. **\$18.95.** The best overall history of the American prison system from 1492 through the 20th Century. A must-read for understanding how little things have changed in U.S. prisons over hundreds of years. 1026

**Prison Nation: The Warehousing of America's Poor**, edited by Tara Herivel and Paul Wright, 332 pages. **\$35.95.** PLN's second anthology exposes the dark side of the 'lock-em-up' political agenda and legal climate in the U.S. 1041

**The Celling of America, An Inside Look at the U.S. Prison Industry**, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. **\$22.95.** PLN's first anthology presents a detailed "inside" look at the workings of the American justice system. 1001

**Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada**, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, PLN Publishing, 221 pages. **\$49.95.** Written by Missouri prisoner Jon Marc Taylor, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, para-legal and college courses by mail. 1071

**The Criminal Law Handbook: Know Your Rights, Survive the System**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 608 pages. **\$39.99.** Explains what happens in a criminal case from being arrested to sentencing, and what your rights are at each stage of the process. Uses an easy to understand question-and-answer format. 1038

**Represent Yourself in Court: How to Prepare & Try a Winning Case**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 528 pages. **\$39.99.** Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. The authors explain what to say in court, how to say it, etc. 1037

**Law Dictionary**, Random House Webster's, 525 pages. **\$19.95.** Comprehensive up-to-date law dictionary explains more than 8,500 legal terms. Covers civil, criminal, commercial and international law. 1036

**The Blue Book of Grammar and Punctuation**, by Jane Straus, 110 pages. **\$14.95.** A guide to grammar and punctuation by an educator with experience teaching English to prisoners. 1046

**Legal Research: How to Find and Understand the Law**, by Stephen Elias and Susan Levinkind, 568 pages. **\$49.99.** Comprehensive and easy to understand guide on researching the law. Explains case law, statutes and digests, etc. Includes practice exercises. 1059

**Deposition Handbook**, by Paul Bergman and Albert Moore, Nolo Press, 352 pages. **\$34.99.** How-to handbook for anyone who conducts a deposition or is going to be deposed. 1054

**Criminal Law in a Nutshell**, by Arnold H. Loewy, 5th edition, 387 pages. **\$43.95.** Provides an overview of criminal law, including punishment, specific crimes, defenses & burden of proof. 1086

## SUBSCRIBE TO PLN FOR 3 YEARS AND CHOOSE ONE BONUS!

1. **FOUR (4) FREE ISSUES FOR 40 TOTAL! OR**
2. **PROTECTING YOUR HEALTH AND SAFETY (A \$10.00 VALUE!)**

**Protecting Your Health and Safety**, by Robert E. Toone, Southern Poverty Law Center, 325 pages. **\$10.00.** This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how to enforce your rights, including through litigation. 1060

**Spanish-English/English-Spanish Dictionary**, 2nd ed. Random House. **\$15.95.** Spanish-English and English-Spanish. 60,000+ entries from A to Z; includes Western Hemisphere usage. 1034a

**Writing to Win: The Legal Writer**, by Steven D. Stark, Broadway Books/Random House, 283 pages. **\$19.95.** Explains the writing of effective complaints, responses, briefs, motions and other legal papers. 1035

**Actual Innocence: When Justice Goes Wrong and How to Make it Right**, updated paperback ed., by Barry Scheck, Peter Neufeld and Jim Dwyer, 403 pages. **\$16.00.** Describes how criminal defendants are wrongly convicted. Explains DNA testing and how it works to free the innocent. Devastating critique of police and prosecutorial misconduct. 1030

**Webster's English Dictionary**, Newly revised and updated, Random House. **\$8.95.** 75,000+ entries. Includes tips on writing and word usage, and has updated geographical and biographical entries. Includes recent business and computer terms. 1033

**Everyday Letters for Busy People**, by Debra Hart May, 287 pages. **\$18.99.** Hundreds of sample letters that can be adapted for most any purpose, including letters to government agencies and officials. Has numerous tips for writing effective letters. 1048

**Roget's Thesaurus**, 717 pages. **\$8.95.** Helps you find the right word for what you want to say. 11,000 words listed alphabetically with over 200,000 synonyms and antonyms. Sample sentences and parts of speech shown for every main word. Covers all levels of vocabulary and identifies informal and slang words. 1045

**Beyond Bars, Rejoining Society After Prison**, by Jeffrey Ian Ross, Ph.D. and Stephen C. Richards, Ph.D., Alpha, 240 pages. **\$14.95.** *Beyond Bars* is a practical and comprehensive guide for ex-convicts and their families for managing successful re-entry into the community, and includes information about budgets, job searches, family issues, preparing for release while still incarcerated, and more. 1080

**Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A.**, by Mumia Abu Jamal, City Lights Publishers, 280 pages. **\$16.95.** In *Jailhouse Lawyers*, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned-advocates who have learned to use the court system to represent other prisoners. 1073

**The Habeas Citebook: Ineffective Assistance of Counsel**, by Brandon Sample, PLN Publishing, 200 pages. **\$49.95.** This is PLN's second published book, written by federal prisoner Brandon Sample, which covers ineffective assistance of counsel issues in federal habeas petitions. Includes hundreds of case citations! 1078

**Complete GED Preparation**, by Steck-Vaughn, 922 pages. **\$24.99.** This useful handbook contains over 2,000 GED-style questions to thoroughly prepare students for taking the GED test. It offers complete coverage of the revised GED test with new testing information, instructions and a practice test. 1099

**\* ALL BOOKS SOLD BY PLN ARE SOFTCOVER / PAPERBACK \***

**Hepatitis and Liver Disease: What You Need to Know**, by Melissa Palmer, MD, 457 pages. **\$17.95.** Describes symptoms & treatments of hepatitis B & C and other liver diseases. Includes medications to avoid, what diet to follow and exercises to perform, plus a bibliography. 1031 ☐

**Arrested: What to Do When Your Loved One's in Jail**, by Wes Denham, 240 pages. **\$16.95.** Whether a defendant is charged with misdemeanor disorderly conduct or first-degree murder, this is an indispensable guide for those who want to support family members, partners or friends facing criminal charges. 1084 ☐

**Prisoners' Self-Help Litigation Manual**, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 960 pages. **\$39.95.** The premiere, must-have "Bible" of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Highly recommended! 1077 ☐

**How to Win Your Personal Injury Claim**, by Atty. Joseph Matthews, 7th edition, NOLO Press, 304 pages. **\$34.99.** While not specifically for prison-related personal injury cases, this book provides comprehensive information on how to handle personal injury and property damage claims arising from accidents. 1075 ☐

**Sue the Doctor and Win! Victim's Guide to Secrets of Malpractice Lawsuits**, by Lewis Laska, 336 pages. **\$39.95.** Written for victims of medical malpractice/neglect, to prepare for litigation. Note that this book addresses medical malpractice claims and issues in general, not specifically related to prisoners. 1079 ☐

**Advanced Criminal Procedure in a Nutshell**, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **\$43.95.** This text is designed for supplemental reading in an advanced criminal procedure course on the post-investigation processing of a criminal case, including prosecution and adjudication. 1090 ☐

**Our Bodies, Ourselves**, by The Boston Women's Health Book Collective, 944 pages. **\$26.00.** This book about women's health and sexuality has been called "America's best-selling book on all aspects of women's health," and is a great resource for women of all ages. 1082 ☐

**Arrest-Proof Yourself**, by Dale Carson and Wes Denham, 288 pages. **\$14.95.** This essential "how not to" guide written by an ex-cop explains how to act and what to say when confronted by the police to minimize the chances of being arrested and avoid additional charges. Includes information on basic tricks that police use to get people to incriminate themselves. 1083 ☐

**Nolo's Plain-English Law Dictionary**, by Gerald N. Hill and Kathleen T. Hill, 496 pages. **\$29.99.** Find terms you can use to understand and access the law. Contains 3,800 easy-to-read definitions for common (and not so common) legal terms. 3001 ☐

**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFave, 7th edition, 603 pages. **\$43.95.** Intended for use by law students, this is a succinct analysis of constitutional standards of major significance in the area of criminal procedure. 1085 ☐

**A Dictionary of Criminal Law Terms** (Black's Law Dictionary® Series), by Bryan A. Garner, 768 pages. **\$33.95.** This handbook contains police terms such as preventive detention and protective sweep, and phrases from judicial-created law such as independent-source rule and open-fields doctrine. A good resource to help navigate your way through the maze of legal language in criminal cases. 1088 ☐

**PLN Cumulative Index. \$22.50 each.** PLN Article Indexes provide detailed information about all PLN articles, including title, author, issue, page number, topics covered, citations, and if it is state, BOP or jail specific. Can be searched on over 500 subjects such as medical neglect or sexual assault. Circle the index(es) you are ordering: **1990-1995, 1996-1998, 1999-2001, 2002-2004** (more recent indexes not yet available) ☐

### Subscription Rates

	1 year	2 years	3 years	4 years
<b>Prisoners</b>	<b>\$30</b>	<b>\$ 60</b>	<b>\$ 90</b>	<b>\$120</b>
<b>Individuals</b>	<b>\$35</b>	<b>\$ 70</b>	<b>\$105</b>	<b>\$140</b>
<b>Professionals</b>	<b>\$90</b>	<b>\$180</b>	<b>\$270</b>	<b>\$360</b>

(Attorneys, agencies, libraries)

### Subscription Bonuses

- 2 years** - 2 bonus issues for 26 total issues  
**3 years** - 4 bonus issues (40 total) or a bonus book as listed on pg. 61  
**4 years** - 6 bonus issues (54 total) or a bonus book as listed on pg. 61

(All subscription rates and bonus offers are valid as of 9-1-2013)



Purchase with Visa, MasterCard, AmEx or Discover by phone: **561-360-2523**

Or buy books and subscriptions online: **www.prisonlegalnews.org**



### Mail Payment and Order to:

Prison Legal News  
P.O. Box 1151  
Lake Worth, FL 33460

**All purchases must be pre-paid. Prisoners can pay with new first-class stamps (strips or books only, no loose stamps) or pre-stamped envelopes, if allowed by institutional policies.**

Please **Change my Address** to what is entered below ☐

### Mail Order To:

Name: \_\_\_\_\_  
 DOC #: \_\_\_\_\_  
 Suite/Cell: \_\_\_\_\_  
 Agency/Inst: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_

### Subscribe to Prison Legal News

### \$ Amount

6 month subscription (prisoners only) - \$18 \_\_\_\_\_  
 1 yr subscription (12 issues) \_\_\_\_\_  
 2 yr subscription (2 bonus issues for 26 total!) \_\_\_\_\_  
 3 yr sub (*write below which FREE book you want*) \_\_\_\_\_  
     or 4 bonus issues for 40 issues total! \_\_\_\_\_  
 4 yr sub (*write below which FREE book you want*) \_\_\_\_\_  
     or 6 bonus issues for 54 issues total! \_\_\_\_\_  
 Random sample issue of PLN - \$3.50 each \_\_\_\_\_

### Books or Index Orders

(No S/H charge on 3 & 4-year sub free books OR book orders OVER \$50!) **Qty.**

\_\_\_\_\_   
 \_\_\_\_\_   
 \_\_\_\_\_   
 \_\_\_\_\_

**Add \$6.00 S/H to Book Orders UNDER \$50**

**FL residents ONLY add 6% to Total Book Cost**

**Total Amount Enclosed:**

\_\_\_\_\_

**\* No refunds on PLN subscription or book / index orders after orders have been placed \***

# 3RD STRIKE? WRONGLY CONVICTED? ERRORS?

ATTENTION!! CA 3<sup>RD</sup> STRIKERS DON'T BE LEFT OUT OR WAIT FOR THE SYSTEM. WE CAN HELP!

## INMATE LEGAL HELP 411 FREEDOM ANGELS

Brian P - "They helped me remove 4 life sentences  
"Big" D McGwen - Back into Court.. And SET FREE  
Tyron S. - 38 years deducted.. FREE NOW!

**PERSONALIZED & REASONABLY PRICED  
ADVANCED LEGAL SERVICES  
SUCCESSFUL WINNING STRATEGIES  
EVEN YOUR ODDS**



We find the **MISSING** facts & information that were never considered or heard in your case originally.

**OUR GOAL= Evidentiary Hearing for YOU!**

**MAKE FREEDOM A PRIORITY?**

**HAVE FAMILY / FRIENDS CALL NOW  
PLANHELP@411FreedomANGELS.com**

**HABEAS Booklet ~ \$20 PayPal or Stamps**

**www.411FreedomANGELS.com**



*You are in our thoughts and prayers*

**WRITS~MOTIONS~BRIEFS  
3<sup>RD</sup> STRIKERS GO to TOP of the List**

- Post Conviction Relief Assistance
- Writ Of Habeas Corpus-State / Federal
- Sentence Modifications
- Pre-Post Parole Board
- In House Legal Investigators
- Resolve Warrants on pending cases
- **MANY Other Legal Services**



**AGGRESSIVE REPRESENTATION to PROTECT YOUR RIGHTS  
JACKSON & ASSOCIATES LAW CENTERS  
402 W. Broadway POB 81609 San Diego, CA 92138  
24/7 call NOW! 1\*855\*411\*ANGELS (2643)**



# PRISONLEGALNEWS.org

**Dedicated to Protecting Human Rights**

>>FREE Data Search |

Decisions

Investigations

Audits

Publications

Cases

Verdicts

Settlements

**If you need to know about prisons and jails or are litigating a detention facility case, you can't afford not to subscribe to our website!**

**Online subscribers get unlimited, 24-hour a day access to the website and its content!**



**Sign up for PLN's FREE listserv to**

**receive prison and jail news and court rulings by e-mail.**

- ▶ PLN's website offers all issues of PLN in both searchable database and PDF formats. Issues are indexed and posted as soon as they go to press.
- ▶ Publications section has numerous downloadable government reports, audits and investigations from around the country.
- ▶ Full text decisions of thousands of court cases, published and unpublished.
- ▶ All content is easy to print for downloading and mailing to prisoners.
- ▶ Most complete collection of prison and jail related verdicts and settlements anywhere.
- ▶ Order books, print subscriptions and make donations on line.

- ▶ Brief bank with a wide assortment of winning motions, briefs, complaints and settlements.
- ▶ Links to thousands of prison, jail, criminal justice and legal websites around the world.
- ▶ Thousands of articles and cases, all fully indexed by more than 500 subjects, searchable by case name, case year, state of origin, court, author, location, case outcome, PLN issue and key word search.
- ▶ Search free, pay only if you find it!
- ▶ The highest quality, most comprehensive prison litigation news and research site in the world.

**Affordable rates to meet your budget  
\$19.95 per month • \$149.95 per year**

**Subscribe to Prison Legal News Online! <http://www.prisonlegalnews.org>**



## Prison Legal News

PO Box 1151  
Lake Worth FL 33460

Change Service Requested

Non-Profit Org.  
U.S. Postage  
PAID  
Portland OR  
Permit No. 3142

### Subscription Renewal

Subscriptions expire after the issue shown on the label is mailed. For example, if the label says: EXPIRES 02/2015, then the subscription expires after the February 2015 issue is mailed. Please renew at least 2 months before the expiration date. IF THE LABEL SAYS **EXPIRES: 02/2014** THIS IS YOUR LAST ISSUE. Please renew immediately to avoid missing any issues.

### Change of Address

If you move or are transferred, please notify PLN as soon as possible so your issues can be mailed to your new address! PLN only accepts responsibility for sending an issue to the address provided at the time an issue is mailed!



#### ARE YOU FRUSTRATED BECAUSE OF THE HIGH COST OF YOUR PHONE CALLS?

Our company **ICCALLS** is here to provide you **excellent service** at very **low rates**.

We have different plans to accommodate for the one that best fits your needs.

Right now we have a promotion of one month **absolutely FREE** for new subscribers. Just provide us the promo code: **PLNICCALLS1\*** Please contact **ICCALLS** to find out how this special promotion works, for either **US** or **INTERNATIONAL** calls. If you are already a customer, contact us to find out how to earn points by referring new customers to the service and get **FREE minutes** every month.

**ICCALLS** also provides you the service of money transfers directly to your commissary's account. You can receive up to **\$300.00** per transaction paying only **\$9.95** using your Debit/Credit Card or your Pay Pal Account.

#### DO NOT WAIT ANY LONGER AND CONTACT US:

Phone:	1(888)718-1595	Monday to Friday
	1(310)496-8292	9:00 AM to 5:00 PM CT
Fax:	1(323)210-7458	9:00 AM to 5:00 PM CT
E-mail:	c.service@iccalls.com	We will be able to assist you
	support@iccalls.com	in English, Spanish, Portuguese,
	www.iccalls.com	and Hebrew.
Mail to:	ICCALLS, LLC	
	P.O. Box 3674	
	Huntington Park, CA 90255	

#### LLAMENOS Y COMIENCE

A AHORRAR DINERO EN

SUS LLAMADAS!!!!



\*RESTRICTIONS APPLY

2010-2013 ICCALLS, LLC





## Corizon Needs a Checkup: Problems with Privatized Correctional Healthcare

by Greg Dober

**C**ORIZON, THE NATION'S LARGEST FOR-profit medical services provider for prisons, jails and other detention facilities, was formed in June 2011 through the merger of Prison Health Services (PHS) and Correctional Medical Services (CMS).

In April 2013, the debt-rating agency Moody's downgraded Corizon's nearly \$360 million worth of debt to a rating of B2 – an indication the company's debt is highly speculative and a high credit risk. According to Moody's, the rating downgrade was due to an "expectation of earnings volatility following recent contract losses, margin declines from competitive pricing pressure on new and renewed contracts, and Moody's belief that Valitas [Corizon's

parent corporation] will be unable to restore metrics to levels commensurate with the prior B1 rating over the near to intermediate term."

Valitas Health Services is majority owned by Beecken Petty O'Keefe & Company, a Chicago-based private equity management firm. Beecken's other holdings are primarily in the healthcare industry.

On September 23, 2013, Moody's again downgraded Corizon's debt rating and changed the company's rating outlook from "stable" to "negative." The following month Corizon announced that it had replaced CEO Rich Hallworth with Woodrow A. Myers, Jr., the former chief medical officer at WellPoint Health. Hallworth, who had been appointed Corizon's CEO in 2011, previously served as the president and CEO of PHS. At the same time that Hallworth was replaced, Corizon president Stuart Campbell also stepped down.

### Prison Medical Care for Profit

ACCORDING TO CORIZON'S WEBSITE, THE company provides healthcare services at over 530 correctional facilities serving approximately 378,000 prisoners in 28 states. In addition, Corizon employs around 14,000 staff members and contractors. The company's corporate headquarters is located in Brentwood, Tennessee and its operational headquarters is in St. Louis, Missouri.

The 2011 merger that created Corizon involved Valitas Health Services, the parent company of CMS, and America Service Group, the parent company of PHS. The *Nashville Business Journal* reported the deal was valued at \$250 million.

"Corizon's vision is firmly centered around service – to our clients, our patients

and our employees," Campbell said at the time. "To that we add the insight of unparalleled experience assisting our client partners, and caring professionals serving the unique healthcare needs of [incarcerated] patients."

Corizon has around \$1.5 billion in annual revenue and contracts to provide medical services for the prison systems in 13 states. The company also contracts with numerous cities and counties to provide healthcare to prisoners held in local jails; some of Corizon's larger municipal clients include Atlanta, Philadelphia and New York City (including the Rikers Island jail). Additionally, the company has its own in-house pharmacy division, PharmaCorr, Inc.

The prison healthcare market has flourished as state Departments of Corrections and local governments seek ways to save money and reduce exposure to litigation. [See: *PLN*, May 2012, p.22]. Only a few major companies dominate the industry. Corizon's competitors include Wexford Health Sources, Armor Correctional Health Services, NaphCare, Correct Care Solutions and Centurion Managed Care – the latter being a joint venture of MHM Services and Centene Corporation. Around 20 states outsource all or some of the medical services in their prison systems.

As Corizon is privately held, there is little transparency with respect to its internal operations and financial information, including costs of litigation when prisoners (or their surviving family members) sue the company, often alleging inadequate medical care.

For example, when Corizon was questioned by the news media in Florida during

## INSIDE

From the Editor	18
Private Prison Racial Disparities	20
When Victims Speak for Criminals	24
Texas Criminal Court Fees	28
CA Female Prisoners Sterilized	32
Michigan Parole Scrutinized	42
Introduction to the FTCA	44
Execution Drugs Hard to Find	46
A Look Inside Maine's Supermax	48
Video Visitation in Jails	50
UNICOR Faces Criticism	52
Oregon Jail Death Lawsuits	54
News in Brief	56



## **DON'T LET THE TIME DO YOU. STAY CONNECTED!**

**Guaranteed savings of up to 90%** on your long distance, out-of-state, and international calls from Federal prisons, county jails and State prisons.

### **Best Rates and Plans**

Multi-number Friends & Family Package for as little as \$10.00/month

More plans & more numbers than any operator -

### **No Hidden Fees**

**What We Say Is What You Pay** – NO additional “fees”, “charges” or “surcharges”

International calls are billed only on call acceptance. No bogus rounding

### **No Contracts, No Penalties, No Hassles**

No long term commitments – Service is always month – to – month. Cancel at anytime with NO penalties and NO cancellation fees with just a phone call or an e-mail.

### **Fast and EZ Setup**

We **ALWAYS** have numbers and can set up instantaneously online or on the phone.

## **Special Commitment, Civil Detention & Halfway House**

\$0.40 connection charge from payphones  
lowest in the business

Voice Mail and Call Recording options

Call, write, e-mail or have your loved ones check out our website for more information.

SP Telecom  
1220 Broadway - # 801-A  
New York, NY 10001  
[www.inmatefone.com](http://www.inmatefone.com)  
e-mail: [clients@inmatefone.com](mailto:clients@inmatefone.com)  
Español: [soporte@inmatefone.com](mailto:soporte@inmatefone.com)  
Call: 1(845)326-5300 (Collect calls are NOT accepted)  
Español: 1(845)342-8110 (Llamadas por cobrar no se aceptan)

Some restrictions apply. Plan availability depends on the Institution

## **NO PERMITA QUE EL TIEMPO LE SEPARE DE SU FAMILIA!**

**Garantizamos ahorros de hasta el 90%** en sus llamadas de larga distancia, entre estados, y en las llamadas internacionales desde prisiones federales, estatales y locales.

### **Los mejores Planes y Tarifas**

Plan para familias y amigos con varios números por tan solo \$10.00/ mes .

Más planes y números que ningún otro operador .

### **No hay letra pequeña**

**Lo Que Ves Es Lo Que Pagas**, NO hay ningún otro cargo extra.

Las llamadas internacionales solo se facturan cuando es aceptada por el familiar al otro lado del hilo telefónico.

**No hay contrato , permanencia ni ningún tipo de trabas .**

El servicio siempre se ofrece en base a un mes de duración pudiendo renovar el mismo todo los meses sin ningún cargo por la terminación del servicio y lo puede solicitar con una simple llamada de teléfono o con un correo electrónico (E-MAIL)

**La solicitud se puede hacer rápida y muy fácil .**

Nosotros siempre tenemos números y podemos procesar el registro inmediatamente en línea o por teléfono.

**Detenidos civiles en cárceles especiales y reclusos en camino a casas de medio camino le ofrecemos los siguientes servicios.**

\$0.40 de recargo desde teléfonos de prepago, la tarifa más baja en el sector .

Buzón de Voz y la posibilidad de grabar las llamadas .



## Prison Legal News

a publication of the  
Human Rights Defense Center  
[www.humanrightsdefensecenter.org](http://www.humanrightsdefensecenter.org)

### EDITOR

Paul Wright

### MANAGING EDITOR

Alex Friedmann

### COLUMNISTS

Michael Cohen, Kent Russell,  
Mumia Abu Jamal

### CONTRIBUTING WRITERS

Matthew Clarke, John Dannenberg,  
Derek Gilna, Gary Hunter,  
David Reutter, Mark Wilson,  
Joe Watson, Christopher Zoukis

### RESEARCH ASSOCIATE

Mari Garcia

### ADVERTISING DIRECTOR

Susan Schwartzkopf

### LAYOUT

Lansing Scott

### HRDC LITIGATION PROJECT

Lance Weber—General Counsel  
Robert Jack—Staff Attorney

**PLN is a monthly publication.**

A one year subscription is \$30 for prisoners, \$35 for individuals, and \$90 for lawyers and institutions. Prisoner donations of less than \$30 will be pro-rated at \$3.00/issue. Do not send less than \$18.00 at a time. All foreign subscriptions are \$100 sent via airmail. PLN accepts Visa and Mastercard orders by phone. New subscribers please allow four to six weeks for the delivery of your first issue. Confirmation of receipt of donations cannot be made without an SASE. PLN is a section 501 (c)(3) non-profit organization. Donations are tax deductible. Send contributions to:

**Prison Legal News**

**PO Box 1151**

**Lake Worth, FL 33460**

**561-360-2523**

**[info@prisonlegalnews.org](mailto:info@prisonlegalnews.org)**

**[www.prisonlegalnews.org](http://www.prisonlegalnews.org)**

PLN reports on legal cases and news stories related to prisoner rights and prison conditions of confinement. PLN welcomes all news clippings, legal summaries and leads on people to contact related to those issues.

Article submissions should be sent to - The Editor - at the above address. We cannot return submissions without an SASE. Check our website or send an SASE for writer guidelines.

Advertising offers are void where prohibited by law and constitutional detention facility rules.

PLN is indexed by the *Alternative Press Index*, *Criminal Justice Periodicals Index* and the *Department of Justice Index*.

## Privatized Healthcare Problems (cont.)

a contract renewal, the company initially tried to prevent the release of its litigation history, claiming it was a “trade secret.”

In 2012, Corizon agreed to settle a lawsuit filed against PHS – one of its predecessor companies – by *Prison Legal News*, seeking records related to the resolution of legal claims against the firm in Vermont. Based on the records produced pursuant to that settlement, PHS paid out almost \$1.8 million in just six cases involving Vermont prisoners from 2007 to 2011. [See: *PLN*, Dec. 2012, p.16].

Companies like Corizon provide healthcare in prisons and jails under the HMO model, with an emphasis on cutting costs – except that prisoners have no other options to obtain medical treatment except through the contractor.

### Arizona DOC

A FORMER CORIZON NURSE HAD HER license suspended and is currently under investigation by the Arizona State Board of Nursing for incompetence. In January 2014, nurse Patricia Talboy was accused of contaminating vials of insulin at three units at the ASPC-Lewis prison, potentially exposing two dozen prisoners to HIV or hepatitis.

Talboy reportedly used a needle to stick prisoners’ fingers to check their blood sugar levels. She then used the same needle to draw insulin from vials of the medication utilized for multiple prisoners, possibly contaminating the insulin in the vials. After placing the vials back into inventory, other staff members may have unknowingly used them to dispense insulin.

“Every indication is that the incident is the result of the failure by one individual nurse to follow specific, standard and well-established nursing protocols when dispensing injected insulin to 24 inmates,” Arizona Department of Corrections (ADC) director Charles L. Ryan said in a January 9, 2014 statement.

Talboy’s failure to follow procedures was discovered after a prisoner told a different nurse about the issue. Corizon reportedly delayed three days before publicly reporting the incident; in a press release, the company admitted that one of its nurses had been involved in “improper procedures for injections.” Talboy received her nursing

license in August 2012 and became an RN in June 2013; as a rookie nurse, Corizon likely paid her less than more experienced nurses.

Following the insulin-related incident, the company was ordered to develop a comprehensive plan that includes “supplemental training and competency testing procedures for blood glucose testing and administration of insulin,” as well as “nurse-peer reporting education to ensure professional accountability” and “patient awareness education on injection protocols.”

Granted, Corizon isn’t alone with respect to such incidents. In August 2012, a nurse employed by the ADC’s previous medical services contractor, Wexford Health Sources, contaminated the insulin supply at ASPC-Lewis through improper injection protocols, potentially exposing 112 prisoners to hepatitis C. [See: *PLN*, July 2013, p.1].

Corizon has a three-year, approximately \$370 million contract to provide medical care in Arizona state prisons, which began in March 2013. The contract award generated controversy because former ADC director Terry Stewart was hired by Corizon as a consultant; current director Charles Ryan had previously worked under Stewart, raising a potential conflict of interest. Ryan denied any improprieties.

According to a report by the American Friends Service Committee released in October 2013, titled “Death Yards: Continuing Problems with Arizona’s Correctional Health Care,” medical services in Arizona prisons did not improve after Corizon replaced Wexford as the ADC’s healthcare contractor. “Correspondence from prisoners; analysis of medical records, autopsy reports, and investigations; and interviews with anonymous prison staff and outside experts indicate that, if anything, things have gotten worse,” the report stated.

### Florida DOC

IN 2013, THE FLORIDA DEPARTMENT OF Corrections (FDOC) awarded Corizon a five-year, \$1.2 billion contract to provide medical services to state prisoners in north and central Florida. Wexford Health Sources was contracted to provide similar services in the southern region of the state for \$240 million. [See: *PLN*, June 2013, p.24]. The wholesale privatization of healthcare in Florida’s prison system followed a 2011 legislative decision to disband the state’s

## Privatized Healthcare Problems (cont.)

Correctional Medical Authority, which had oversight over prison medical care. [See: *PLN*, May 2012, p.30].

The contracts were part of the Republican administration's initiative to expand privatization of government services, including prison management and healthcare, in spite of previous setbacks. In 2006, PHS withdrew two months into an almost \$800 million contract to provide medical care to Florida prisoners; at that time, the company said the contract was not cost-effective and claimed it would lose money.

The 2013 contract awards to Corizon and Wexford followed a two-year legal fight. In 2011, AFSCME Florida and the Federation of Physicians and Dentists/Alliance of Healthcare and Professional Employees filed suit challenging the prison healthcare contracts, in an effort to protect the jobs of nearly 2,600 state workers.

On June 21, 2013 the First District Court of Appeals approved the privatization of medical care in FDOC facilities,

overturning a ruling by the Leon County Circuit Court. The appellate court noted in its decision that "The LBC [Legislative Budget Committee] simply moved funds from different line items within the Department's Health Services' program, providing additional funds for contracts that the Department otherwise had the authority to enter." See: *Crews v. Florida Public Employers Council* 79, 113 So.3d 1063 (Fla. Dist. Ct. App. 1st Dist. 2013).

Under the terms of the FDOC's contract with Corizon, the company must provide medical care to Florida state prisoners for 7% less than it cost the FDOC in 2010. When entering into the contract, state officials apparently had few concerns about the numerous lawsuits previously filed against Corizon, and no hard feelings toward the company's predecessor, PHS, when it terminated its 2006 contract to provide medical services to Florida prisoners because it wasn't profitable.

"Most people feel, as long as they achieve their 7 percent savings who cares how they treat inmates?" noted Michael Hallett, a professor of criminology at the University of North Florida.

## Florida Counties

IN A SEPTEMBER 6, 2012 UNPUBLISHED ruling, the Eleventh Circuit Court of Appeals affirmed a \$1.2 million Florida jury verdict that found Corizon – when it was operating as PHS – had a policy or custom of refusing to send prisoners to hospitals. The Court of Appeals held it was reasonable for jurors to conclude that PHS had delayed medical treatment in order to save money. See: *Fields v. Corizon Health*, 490 Fed.Appx. 174 (11th Cir. 2012).

The jury verdict resulted from a suit filed against Corizon by former prisoner Brett A. Fields, Jr. In July 2007, Fields was being held in the Lee County, Florida jail on two misdemeanor convictions. After notifying PHS staff for several weeks that an infection was not improving, even with antibiotics that had been prescribed, Fields was diagnosed with MRSA. PHS did not send him to a hospital despite escalating symptoms, including uncontrolled twitching, partial paralysis and his intestines protruding from his rectum. A subsequent MRI scan revealed that Fields had a severe spinal compression; he was left partly para-

## BETTER JOBS FASTER PAROLE

The only affordable 2-yr and 4-yr college programs available to inmates

New Freedom College is designed for inmates, so our 2-yr & 4-yr programs offer a wide range of classes & majors that can all be completed in prison. At only \$33-\$50/credit, NFC will save you over \$20,000 compared to traditional schools like Adams State (\$165/credit + books = about \$25,000 for 120 cr).

### New Freedom has:

- majors you want like Business & Psych
- multi-class & referral discounts
- lots of feedback
- flexibility to meet your needs & openness to your ideas
- low rates that include books, study guides, etc.



4-yr diploma as low as \$3,960

We have a Certificate Program so everyone can participate, plus a monthly payment plan to best meet what you're able to afford.

... Write for info guide & enrollment form:



**New Freedom College**  
1957 W. Burnside St. #1660  
Portland, OR 97209  
NewFreedomCollege.org

## BRANLETTES BEAUTIES

### OUR SIMPLE POLICIES:

SPECIAL REQUESTS ARE NOT PERMITTED AND ALL MODELS ARE OF LEGAL AGE (BOP-FRIENDLY). DUE TO TREMENDOUS TIME AND COST ANSWERING LETTERS, UNLESS YOU ARE PLACING AN ORDER OR A QUESTION REGARDING YOUR ORDER, WE WILL NOT REPLY TO ANY OTHER QUESTIONS. SASE ARE REQUIRED FOR ANY INQUIRIES OR CONCERNS!

**YOU AND YOU ALONE ARE RESPONSIBLE FOR YOUR SELECTIONS BEING ALLOWED INTO YOUR FACILITY:**

KNOW YOUR INSTITUTIONS POLICIES AS TO WHAT IMAGE CONTENT IS ALLOWED. RETURNED ORDERS ARE NON-REFUNDABLE. THEY WILL BE HELD FOR 14 CALENDAR DAYS IN ORDER FOR YOU TO SEND SELF-ADDRESSED STAMPED: 3 FIRST CLASS STAMPS PER ENVELOPE, WITH A STREET ADDRESS FOR EVERY 20 PICTURES. ALL RETURNED IMAGES HELD AFTER TWO WEEKS WILL BE RE-SOLD AND WE WILL RETURN TO OUR STOCK.

**ALL PAYMENTS ARE BY INSTITUTIONAL CHECKS OR U.S. POSTAL SERVICE OR WESTERN UNION MONEY ORDERS.**

THESE PAYMENTS ARE PROCESSED IMMEDIATELY AND SHIPPED IN LESS THAN 3-4 WEEKS. ANY OTHER COMPANY MONEY ORDERS DELAY SHIPMENT 8-10 WEEKS OR UNTIL THAT MONEY CLEARS OUR BANK. YES, WE DEAL WITH PEOPLE THAT ARE, WHILE IN PRISON, STILL TRYING NICKEL AND DIME SCAMS...

**ALL SALES ARE FINAL! EACH CATALOG HAS 84 GORGEOUS LADIES TO CHOOSE FROM HIGH QUALITY PRINTS ON 4X6 GLOSSY PHOTO PAPER**

### OUR PRICES ARE SIMPLE:

1-4999 PHOTOS = 0.45 CENTS EACH  
5000+ PHOTOS = 20% DISCOUNT  
1-9 CATALOGS : \$3.00 EACH (+SASE)  
10 CATALOGS: \$25.00+SASE (4 STAMPS)

### SHIPPING & HANDLING:

DUE TO VARIOUS PRISON POLICIES REGARDING HOW MANY PICTURES CAN BE SENT IN ONE ENVELOPE, OUR POLICY IS AS FOLLOWS:

01 - 5 PHOTOS---\$1.00 PER ENVELOPE  
06 - 15 PHOTOS---\$1.50 PER ENVELOPE  
16 -25 PHOTOS---\$2.00 PER ENVELOPE

## BRANLETTES BEAUTIES

SELECT YOUR FAVORITE:

WHITE CATALOGS (60 VOLUMES)  
BLACK CATALOGS (60 VOLUMES)  
ASIAN&LATINO CATALOGS (60 VOLUMES)  
PLEASE STATE WHAT STYLE PHOTOS:  
PROVOCATIVE POSES OR NUDE

### FREE CATALOG???

YOU READ IT RIGHT!  
JUST SEND US TWO U.S. FOREVER STAMPS AND A SELF ADDRESSED SELF ENVELOPE AND WE WILL SEND TO YOU ONE NUDE OR BOP-FRIENDLY SAMPLE CATALOG (1 PER CUSTOMER) WITH 84 GORGEOUS GIRLS IN FULL COLOR. ACT NOW AS THIS OFFER WILL NOT BE AROUND LONG!!

BRANLETTES BEAUTIES BAG A RANDOM SELECTION OF 50 OF THE RARE AND EXOTIC \*\*\*YES, FIFTY BEAUTIES ALL POSING JUST FOR YOU!\*\*\* PLUS TWO OF OUR FINEST COLOUR CATALOGS ONLY \$19.95 DID YOU READ THAT RIGHT??? \*\*\*\$19.95\*\*\* YES, ONLY \$19.95 FOR 50 OF BRANLETTES BEAUTIES (PLEASE SPECIFY NUDE OR BOP-FRIENDLY) \*\*\*PLUS\*\*\* TWO OF OUR FINEST COLOUR CATALOGS FREE (YOU PICK A VOLUME) OUR REGULAR SHIPPING AND HANDLING POLICIES APPLY.

**BRANLETTES**  
P.O.BOX 5765  
BALTIMORE, MD  
21282

lyzed due to inadequate medical care.

The Eleventh Circuit wrote that PHS “enforced its restrictive policy against sending prisoners to the hospital,” and noted that a PHS nurse who treated Fields at the jail “testified that, at monthly nurses’ meetings, medical supervisors ‘yelled a lot about nurses sending inmates to hospitals.’” Further, PHS “instructed nurses to be sure that the inmate had an emergency because it cost money to send inmates to the hospital.”

At trial, the jury found that PHS had a custom or policy of deliberate indifference that violated Fields’ constitutional right to be free from cruel and unusual punishment. The jurors concluded that Fields had a serious medical need, PHS was deliberately indifferent to that serious medical need, and the company’s actions proximately caused Fields’ injuries. The jury awarded him \$700,000 in compensatory damages and \$500,000 in punitive damages. [See: *PLN*, March 2013, p.54; Aug. 2011, p.24].

More recently, the estate of a 21-year-old prisoner who died at a jail in Manatee County, Florida filed a lawsuit in October 2013 against the Manatee County Sheriff’s

Office and Corizon, the jail’s healthcare provider. The complaint accuses the defendants of deliberate indifference to the serious medical needs of Jovon Frazier and violating his rights under the Eighth Amendment.

In February 2009, Frazier was incarcerated at the Manatee County Jail; at the time of his medical intake screening, staff employed by Corizon, then operating as PHS, noted that his health was unremarkable. Frazier submitted a medical request form in July 2009, complaining of severe pain in his left shoulder and arm, and a PHS nurse gave him Tylenol.

Throughout August and September 2009, Frazier submitted five more medical requests seeking treatment for his arm and shoulder. “It really hurts! HELP!” he wrote in one of the requests. PHS employees saw him and recorded his vital signs. Despite the repeated complaints, Frazier was never referred to a doctor or physician assistant; on September 9, 2009 his treatment was documented as routine but he was placed on the “MD’s list.”

An X-ray was taken on September 17, 2009 to rule out a shoulder fracture.

The X-ray was negative for a fracture, and Frazier was not referred to a doctor. He submitted two more medical requests that month and five requests in October 2009 seeking treatment for his increasingly painful condition. The complaint alleges that in total, Frazier submitted 13 medical request forms related to pain over a period of three months; he was seen by a nurse each time but not examined by a physician.

On October 29, 2009, Frazier received an X-ray to determine if he had a tendon injury. An MRI was recommended and he was transported to a hospital where an MRI scan revealed a large soft tissue mass on his shoulder. A doctor at the hospital, concerned that the mass was cancerous, recommended additional tests.

After being diagnosed with osteosarcoma, a form of bone cancer, Frazier was returned to the jail and subsequently treated at the Moffitt Cancer Center, where he received chemotherapy, medication and surgery. Despite this aggressive treatment the cancer progressed and Frazier’s left arm was amputated. The cancer continued to spread, however, and he was diagnosed with lung cancer in June 2011. He died

**William L Schmidt**  
ATTORNEY at LAW, P.C.

[911CIVILRIGHTS@GMAIL.COM](mailto:911CIVILRIGHTS@GMAIL.COM)

**559.261.2222**

#### **OCTOBER 2013, CALIFORNIA:**

- **\$90,000 settlement with CDCR and LA Sheriff**
- **Confidential settlement with CDCR**
- **\$600,000 injury recovery**
- **\$150,000 bad faith settlement**
- **Federal action dismissed without penalty by agency**
- **Parole dates granted by BPH**

CIVIL RIGHTS-SECTION 1983-FEDERAL AND STATE  
APPEALS AND WRITS- ONLY COMPLEX AND UNIQUE CASES  
PRISON-TRANSFER-DISCIPLINE-VISITING-CLASSIFICATION-HOUSING  
PROP. 36 RE-SENTENCING-3 STRIKES-MEDICAL-PAROLE HEARINGS

-----**OUR CLIENTS GO HOME, HOW ABOUT YOU?**-----

*Please submit a single page summary of your case. Due to the volume, we cannot return documents or respond to all inquires. We are not a low cost or pro bono law firm, but if you want results, contact us.*

**PO Box 25001  
Fresno, CA  
93729**



## Privatized Healthcare Problems (cont.)

within three months of that diagnosis, on September 18, 2011.

In a letter to the attorney representing Frazier's estate, Florida oncologist Howard R. Abel wrote that the lack of treatment provided by Corizon at the Manatee County Jail constituted "gross negligence and a reckless disregard to Mr. Frazier's right to timely and professionally appropriate medical care."

The lawsuit filed by Frazier's estate claims that Corizon was aware of his serious medical condition but failed to provide adequate treatment. In addition, the complaint contends the company has a widespread custom, policy and practice of discouraging medical staff from referring prisoners to outside medical practitioners and from providing expensive medical tests and procedures. Finally, the lawsuit states that "Corizon implemented these widespread customs, policies and practices for financial reasons and in deliberate indifference to [the] serious medical needs of Frazier and other inmates incarcerated at Manatee County Jail."

On January 10, 2014, U.S. District Court Judge James Moody denied Corizon's motion to dismiss the case. The company had argued that the allegations in the lawsuit failed to assert sufficient facts to establish deliberate indifference, amounted only to medical negligence and were insufficient to establish gross negligence, and

failed "to adequately allege a policy or custom that violated Frazier's rights." Judge Moody disagreed, finding the claims set forth in the complaint were "sufficient to establish a constitutional violation."

The Manatee County Sheriff's Office had better luck with its motion to dismiss. The Sheriff argued the complaint did not establish facts indicating that the jail had a similar practice – like Corizon – of providing deliberately indifferent medical care to prisoners. The court agreed and dismissed the claims against the Sheriff's Office; the claims against Corizon remain pending. See: *Jenkins v. Manatee County Sheriff*, U.S.D.C. (M.D. Fla.), Case No. 8:13-cv-02796-JSM-TGW.

### Idaho DOC

IN FEBRUARY 2013, THE IDAHO DEPARTMENT OF CORRECTIONS (IDOC) announced it had reached a one-year extended agreement with Corizon to provide medical care in the state's prison system. However, the *Idaho Business Review* reported that the extension also resulted in a rate increase. Then-Corizon president Stuart Campbell informed the IDOC Board of Correction that the company wouldn't sign an extension for less money, stating the current contract had become too costly. During the preceding three years of the contract the IDOC had incurred approximately 20% in cumulative rate increases.

Both sides agreed that the contract would run through December 2013 and the IDOC would pay an additional \$250,000.

It seems odd that Idaho was willing to continue contracting with the company, though, as the relationship between the IDOC and Corizon has been a rocky one.

The quality of medical care at the Idaho State Correctional Institution (ISCI) in Boise has been an ongoing issue for nearly three decades. The prison was the focus of a class-action lawsuit filed on behalf of prisoners alleging a variety of problems, including inadequate healthcare. The lawsuit was known as the *Balla* litigation after plaintiff Walter Balla.

In July 2011, after new complaints were filed regarding medical care at ISCI, U.S. District Court Judge B. Lynn Winmill appointed a special master, Dr. Marc F. Stern, to assess the situation at the facility. The court wanted Stern to confirm whether ISCI was in compliance with the temporary agreements established in the *Balla* case, and to investigate and report on "the constitutionality of healthcare" at the facility.

Dr. Stern, a former health services director for the Washington Department of Corrections who also had previously worked for CMS, one of Corizon's predecessor companies, issued a scathing report in February 2012. With the aid of psychiatrist Dr. Amanda Ruiz, Stern and his team reviewed ISCI over a six-day period and met with dozens of prisoners, administrators and Corizon employees.

Stern stated in the report's executive summary: "I found serious problems with the delivery of medical and mental health care. Many of these problems have either



Serving You with Excellence Since 2009

**We make it simple.**

**You reach your loved ones by calling a local number. That's a lot cheaper than calling long distance. It's that simple!**

- We charge \$2.50 per month for the number.
- For Calls to anywhere in the U.S., we charge you 5¢ per minute
- To Mexico - 15¢; to Canada - 11¢, to just about anywhere else in the world - 31¢
- No Contract, No Credit Check, No Setup Fee, No Cancellation Fee, No Early Termination Fee
- Cancel anytime; any money left on the account is refunded

**Any time you refer a new customer and they sign up, you both get 300 free minutes! Some restrictions apply. Details upon request.**

**Tell Your Folks to Sign Up at [www.freedomline.net](http://www.freedomline.net)**

**Or Mail: FreedomLine**  
PO Box 7 - SCA  
Connersville, IN 47331

**Also see our long-running Classified Ad in this and every issue**

FCC Reg. No. 0021217047



resulted or risk resulting in serious harm to prisoners at ISCI. In multiple ways, these conditions violate the rights of prisoners at ISCI to be protected from cruel and unusual punishment. Since many of these problems are frequent, pervasive, long-standing, and authorities are or should have been aware of them, it is my opinion that authorities are deliberately indifferent to the serious health care needs of their charges."

The report found that prisoners who were terminally ill or in long-term care were sometimes left in soiled linens, given inadequate pain medication and went for long periods without food or water. The findings regarding sick call noted instances in which prisoners' requests either resulted in no care, delayed care or treatment that was deemed dangerous. Emergency care situations had insufficient oversight, delays or no response; inadequately trained medical staff operated independently during emergencies without oversight from an RN or physician. The report also found problems with the pharmacy and medication distribution at ISCI.

In one case, a prisoner with a "history of heart disease was inexplicably dropped

from the rolls of the heart disease Chronic Care Clinic." As a result, medical staff stopped conducting regular check-ups and assessments related to the prisoner's heart condition. A few years later the prisoner went in for a routine visit, complaining of occasional chest pain. No evaluation or treatment was ordered and the prisoner died four days later due to a heart attack. In another case, Corizon staff failed to notify a prisoner for seven months that an X-ray indicated he might have cancer.

Dr. Stern's report not only reviewed processes but also staff competency and adequacy. The report cited allegations that a dialysis nurse at ISCI overtly did not like prisoners, and routinely "failed to provide food and water to patients during dialysis, prematurely aborted dialysis sessions or simply did not provide them [dialysis] at all and failed to provide ordered medications resulting in patients becoming anemic." Stern concluded that prison officials were aware of this issue and the danger it presented to prisoners, but "unduly delayed taking action."

The mental health care provided by Corizon at ISCI was found to be deficient

by Dr. Ruiz, who conducted the psychiatric portion of the court-ordered review. The report noted that the facility had 1) inadequate "screening of and evaluating prisoners to identify those in need of mental health care," 2) "significant deficiencies in the treatment program at ISCI" which was "violative of patients' constitutional right to health care," 3) an "insufficient number of psychiatric practitioners at ISCI," 4) incomplete or inaccurate treatment records, 5) problems with psychotropic medications, which were prescribed with no face-to-face visits or follow-up visits with prisoners and 6) inadequate suicide prevention training.

The report concluded: "The state of guiding documents, the inmate grievance system, death reviews and a mental health CQI [continuous quality improvement] system at ISCI is poor. While not in and of themselves unconstitutional, it is important for the court to be aware of this and its possible contribution to other unconstitutional events."

In March 2012, shortly after Dr. Stern's report was released over the objection of state officials, Corizon disagreed with its findings. The company retained

## Help From Outside, For Humanity Inside.

*Offering basic services on the outside.*

Help From Outside understands what you're going through. We can help you accomplish the things you need to get done but can't.

**We offer:**

- High standards & ethics
- Timely & professional services
- Personal touch

"HFO has excellent business etiquette and ethics."  
- T. Brown

"I like that you sent a personal letter. HFO is more personable than your competitors."  
- A. Mitchell

**WE'VE MOVED! PLEASE CONTACT US AT OUR NEW ADDRESS:**

For a brochure and application please send a SASE to:  
 Help From Outside | 2620 Bellevue Way NE #200 | Bellevue, WA 98004  
 206.486.6042 | [www.helpfromoutside.com](http://www.helpfromoutside.com)

# Learn The Law!

**It's a POWERFUL influence in your life.**

Choose education to help yourself and others. Blackstone's Independent Study Paralegal Program offers you the opportunity to be productive while serving time.

- Learn Civil & Criminal Law
- Learn Legal Research
- 110 Years of Legal Training Experience
- Study in Your Spare Time
- Affordable Tuition, Easy Payment Plan

Only  
\$30.00  
Per Month

☐ **Yes! I'd like to learn more** ☐ **Paralegal Course**

**Please rush me FREE course information.**

Name \_\_\_\_\_ Doc# \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Blackstone  
Career Institute

Your tuition cost covers your entire program including all textbooks, study guides, exam and homework evaluation services, and your certificate.

**P.O. Box 3717 • Allentown, PA 18106**

## Privatized Healthcare Problems (cont.)

the National Commission on Correctional Health Care (NCCHC) to review the report. Corizon described the review as an “independent assessment,” even though it was paying NCCHC accreditation fees.

The NCCHC review consisted of a three-person team assessing the facility over a two-day period in April 2012. Unlike Stern’s assessment of medical and mental health care, the NCCHC team did not interview prisoners or include a psychiatrist. Regardless, the agency concluded that “The basic structure of health services delivery at ISCI meets NCCHC’s standards.”

Corizon stated in a press release that Dr. Stern’s report was “incomplete, mislead-

ing and erroneous,” and then-CEO Rich Hallworth appeared in a video defending the company. The NCCHC had previously accredited Corizon’s healthcare services at ISCI, thus in essence the NCCHC’s review was self-validating the organization’s prior accreditation findings. Also, according to NCCHC’s website, two Corizon officials sit on the agency’s health professionals certification board of trustees.

Corizon’s criticism of Dr. Stern’s report is just one example where the company has objected to an independent, third-party assessment of its medical services. The *Balla* case settled in May 2012 after 30 years of litigation. [See: *PLN*, Feb. 2013, p.40].

### Indiana DOC

FOLLOWING A COMPETITIVE BIDDING process, Corizon was selected to continue providing medical care to Indiana state prisoners under a three-year contract effective January 1, 2014. The contract has a cap of \$293 million, based on a per diem fee of \$9.41 per prisoner.

Three weeks later, a lawsuit filed in federal court named Corizon and the Indiana Department of Correction as defendants in connection with the wrongful death of prisoner Rachel Wood. Wood, 26, a first-time drug offender, died in April 2012; the suit, filed on behalf of her family, claims she was transferred from prison to prison and denied care for her serious medical conditions, which included lupus and a blood clotting disorder.

“Notwithstanding the duty of the prison medical staff to provide adequate medical care to Rachel and to treat her very serious life threatening conditions, prison medical staff willfully and callously disregarded her condition, and allowed Rachel to

deteriorate and die,” the complaint stated.

“That is just the attitude of these guys, is saving money rather than providing health care,” said Michael K. Sutherland, the attorney representing Wood’s family.

Prison officials reportedly moved Wood among several different prisons and hospitals, and at one point lost track of her and claimed she had escaped even though she was still incarcerated.

“She died a horrible death and she died alone,” stated her father, Claude Wood. The lawsuit remains pending. See: *Williams v. Indiana DOC*, Marion County Superior Court (IN), Case No. 49D05-1401-CT-001478.

### Maine DOC

IN AN OCTOBER 2013 *BANGOR DAILY NEWS* article, Steve Lewicki, coordinator of the Maine Prisoner Advocacy Coalition, discussed the state of healthcare in Maine’s prison system. “Complaints by prisoners are less,” he said, noting that while medical services provided to prisoners are better than in the past, there are still concerns. This relative improvement coincided with the end of the state’s contract with Corizon. The contract, valued at approximately \$19.5 million, was awarded to another company in 2012.

A year earlier, the Maine legislature’s Office of Program Evaluation and Government Accountability (OPEGA) completed a review of medical services in state prisons. The agency contracted with an independent consultant, MGT of America, to conduct most of the fieldwork, and the review included services provided under Corizon’s predecessor company, CMS.

The OPEGA report, issued in November 2011, cited various deficiencies in medical care at Maine prisons – including medications not always being properly

## Corcoran Sun

Full Color Prison Yard Monthly  
News ♦ Entertainment ♦ Resources

**3 Month Special Subscription**

**\$5 or 1 Book of FCS**



### COLOR NEW 16 PAGES

Expanded full color format with exciting episodes of thrilling novels and sexy pics. Many how-to articles on writing, art and health. Filled with entertainment: puzzles, trivia, jokes, poetry... Submit your writing, art, poetry etc. See your submission, name and contact info in print.

**Special 6-Issue Subscription (\$10 or 2 Books FCS)**

**Special Full Year Subscription (\$20 or 4 Books FCS)**

Payments to: Freebird Publishers

Box 541– Dept. BK, North Dighton, MA 02764

[www.FreebirdPublishers.com](http://www.FreebirdPublishers.com)

[Diane@FreebirdPublishers.com](mailto:Diane@FreebirdPublishers.com)

## MARILEE MARSHALL & ASSOCIATES, ATTORNEYS AT LAW

California State Bar Board of Specialization

**Certified Criminal Law and  
Appellate Law Specialist**

**If you have a California case  
you need a California lawyer!**

**(213) 489-7715**



**State and Federal Appeals and Writs,  
Lifer Parole Hearings and Related Writs**

**29 years of success**

523 West Sixth Street, Suite 1109

Los Angeles, CA. 90014

[marileemarshallandassociates.com](http://marileemarshallandassociates.com)

administered and recorded by CMS staff. Although the company was notified of the problem, no corrective action was taken. CMS employees did not follow policies related to medical intake and medical records; OPEGA reported that 38% of prisoners' medical files had inadequate or inaccurate documentation regarding annual physical assessments, and that files were not complete or consistently maintained. The report found 11% of sick calls reviewed were either not resolved timely or had no documented resolution. OPEGA also criticized CMS for inadequate staff training.

At a January 2012 legislative committee hearing, state Senator Roger Katz asked Corizon regional vice president Larry Amberger, "My question to you is in light of this history, why should the state seriously be considering any proposal your company might make to get this contract back again?"

In response, Amberger criticized the methodology used by MGT during the assessment and said he believed Corizon provided quality medical care. Questioning and challenging the findings of an independent reviewer is the same tactic the company used in Idaho. Regardless, Corizon's contract to provide medical care to Maine state prisoners is now a part of history.

### Louisville, Kentucky

WHILE SOME JURISDICTIONS, LIKE MAINE, have chosen not to renew their contracts with Corizon due to performance-related

problems, in 2013 the Metro Department of Corrections in Louisville, Kentucky (LMC) offered the company a chance to rebid for its \$5.5 million contract to provide medical care at the LMC jail. This time, however, it was Corizon that said "no thanks."

The rebid offer was made even though seven healthcare-related prisoner deaths occurred in a seven-month period in 2012 during Corizon's prior contract, which expired in February 2013. Nevertheless, LMC and Corizon agreed to extend the contract through July 30, 2013 on a month-to-month basis pending a formal rebid.

After the expiration of the month-to-month contract extension, Corizon notified LMC that it was no longer interested in providing services to the corrections department and would not seek to rebid the contract. LMC director Mark Bolton told the *Courier Journal* he was "surprised" by the company's decision. What seems more surprising is that LMC wanted to continue contracting with Corizon to provide medical services in spite of the number of prisoner deaths.

In April 2012, Savannah Sparks, 27, a heroin addict and mother of three, was arrested and held on shoplifting charges at the LMC jail. While withdrawing from heroin she vomited, sweat profusely, could not sit up, could not eat or drink, and defecated and urinated on herself. Six days later she was dead. According to the medical examiner, her death was due to "complications of chronic substance abuse with withdrawal."

A subsequent wrongful death suit

alleged that Corizon and LMC employees were negligent in failing to provide treatment for Sparks' opiate addiction and withdrawal. Corizon settled the suit under confidential terms. See: *May v. Corizon*, Jefferson County Circuit Court (KY), Case No. 13-CI-001848.

Four months after Sparks' death, on August 8, 2012, another LMC prisoner, Samantha George, died. A lawsuit filed in Jefferson County Circuit Court claimed that George was moved from the Bullitt County Jail to the LMC facility on a charge of buying a stolen computer. According to the complaint, she told a Corizon nurse that she was a severe diabetic, needed insulin, and was feverish and in pain from a MRSA infection.

The nurse notified an on-call Corizon physician, who was not located at the facility and thus could not examine George in person, to decide if she should be taken to an emergency room. The doctor recommended monitoring George and indicated he would see her the next day. George's condition rapidly deteriorated while she was monitored by staff at the jail; she was found unresponsive a few hours after being admitted to the facility and pronounced dead a short time later.

An autopsy concluded that George died due to complications from a severe form of diabetes compounded by heart disease. According to the lawsuit, the Corizon doctor never saw George; among other defendants, the suit named Corizon and LMC director Mark Bolton as defendants.

#### LAW OFFICES OF

### ELMER ROBERT KEACH, III



Law Offices of Elmer Robert Keach, III, PC  
One Pine West Plaza, Suite 109  
Washington Avenue Extension  
Albany, NY 12205-5531  
518.434.1718  
www.keachlawfirm.com

Attorney Bob Keach  
NITA Master Advocate  
Member, Multi-Million Dollar Advocates Forum  
Outside Counsel, Prison Legal News  
National Practice

### Experienced Civil Rights Attorney dedicated to seeking justice for those who are incarcerated

*Custodial Death Cases • Wrongful Arrest and Incarceration  
Medical Indifference Cases • Corrections and Police Brutality  
Sexual Abuse and Assault • Illegal Strip Searches  
Class Actions • First Amendment Litigation (Northeast Only)*

Reasonable Hourly Rates for: Criminal Defense, Appeals,  
Post-Conviction Relief, Habeas Corpus

### WHEN YOU OR A LOVED ONE HAVE BEEN WRONGED, YOU HAVE A VOICE.

Attorney Keach prefers all inquiries by mail to be typed, and limited to five pages.  
DO NOT SEND ORIGINAL DOCUMENTS OR ORIGINAL MEDICAL RECORDS.  
Make sure to exhaust your administrative remedies and comply with state law notice requirements, if applicable, to preserve state law intentional tort/negligence claims.

## Privatized Healthcare Problems (cont.)

The case was removed to federal court, then remanded to the county circuit court in October 2013. See: *George v. Corizon*, U.S.D.C. (W.D. Ky.), Case No. 3:13-cv-00822-JHM-JDM.

A few weeks after George's death, Kenneth Cross was booked into the LMC jail on a warrant for drug possession. According to a subsequent lawsuit, upon Cross' arrival at the jail a nurse documented that he had slurred speech and fell asleep numerous times during the medical interview. Several hours later he was found unconscious, then died shortly thereafter due to a drug overdose. The lawsuit filed by Cross' estate alleged that employees at the LMC jail were deficient in recognizing and treating prisoners' substance abuse problems and that the facility was inadequately staffed for such medical care.

After the deaths of Sparks, George, Cross and four other prisoners in 2012, LMC director Bolton said he believed Corizon took too long to evaluate and

treat prisoners at the jail. According to the *Courier-Journal*, Bolton sent an email to his staff in December 2012 regarding the prisoners' deaths, stating, "Mistakes were made by Corizon personnel and their corporation has acknowledged such missteps." He further indicated that Corizon employees – not LMC staff members – were responsible for the care of the prisoners who died. Six Corizon employees at the LMC jail resigned in December 2012 during an internal investigation; they were not identified.

Bolton's criticism was too little, too late to prevent the deaths of the seven LMC prisoners, though the jail has since made improvements to its medical services, including a full-time detox nurse and new protocols for prisoners experiencing withdrawal. One could speculate that LMC's critique of Corizon might be a litigation tactic, to deflect responsibility. The fact remains that seven deaths occurred under Corizon's watch and, notwithstanding those deaths, LMC was willing to renew its contract with the company.

In January 2014, the Louisville Metro Police's Public Integrity Unit concluded investigations into three of the deaths at the jail, and criticized both Corizon and LMC. The Commonwealth Attorney's Office found that Sparks' and George's deaths were preventable; however, no criminal charges were filed. Dr. William Smock, a forensic examiner who served as a consultant during the investigations, stated with respect to George's death: "There is compelling evidence of a significant deviation from the standard of care and medical negligence on the part of the medical providers."

"I'm glad to see that the government's investigation matches exactly what our investigation showed, which is that her death

and others like hers is easily preventable," said Chad McCoy, the attorney representing George's estate.

## Minnesota DOC

AFTER PROVIDING MEDICAL CARE TO Minnesota state prisoners for 15 years, Corizon was not selected when the contract was rebid in 2013 – despite having submitted the lowest bid. Instead, competitor Centurion Managed Care was to begin providing healthcare services in Minnesota's prison system effective January 1, 2014 under a two-year, \$67.5 million contract.

Corrections Commissioner Tom Roy said the contract with Centurion was expected to "deliver significant savings to taxpayers while improving the quality of care for offenders."

According to the *Star-Tribune*, nine prisoners died and another 21 suffered serious or critical injuries in Minnesota correctional facilities due to delay or denial of medical care under the state's previous contract, which had been held by Corizon or its predecessor, CMS, since 1998.

That contract was for a fixed annual flat fee of \$28 million. A flat fee contract provides an incentive for the contractor to tightly control costs, as a reduction in expenses results in an increase in profit. The *Star-Tribune* found that many of the staffing arrangements negotiated in the contract played a role in the deaths and injuries. For example, the contract allowed Corizon physicians to leave at 4:00pm daily and did not require them to work weekends. During off-hours there was only one doctor on call to serve the state's entire prison system, and many of the off-hour consultations were done telephonically without the benefit of the prisoner's medical chart. Under the

## TYPING SERVICES

Provided since 1998

Specifically designed, with special rates for the incarcerated person.

Black / Color Printing and Copying

SEND A SASE FOR A "FREE" PRICE LIST AND MORE INFORMATION TO:

LET MY FINGERS DO YOUR TYPING  
Sandra Z. Thomas (dba)

P O Box 4178

Winter Park, Florida 32793-4178

Phone: 407-579-5563

Special Offer: \$2.00 off first order.

Special offer void after: 12/31/2013



**INMATE SHOPPER**  
2014  
READERS CHOICE  
RESULTS

OVER 100,000 PRISONER RESOURCES  
FREE ADS  
100 ORGS  
LGBT resources  
En Espanol

EVERY ISSUE CONTAINS:

- Zero Pen Pal Resources
- 400 Businesses Serving Prisoners
- 200 Non Profit Orgs for Prisoners
- 80 Designer Gift Stores
- Free Ad Space to Sell Your Stuff
- 15 Magazine Sellers
- 32 Sexy Photo Sellers
- and lots of ladies, too, BOP cool.
- Typist & Publishing Services

Pay to: Inmate Shopper  
P.O. Box 231 • Edna, TX 77957  
PRICE: \$17.99 + \$6 Priority Mail with Tracking #.

**America's Largest Up-To-Date Resources For Prisoners**

**\$14.98 FREE Shipping**

**Bonus! 100 Orgs en Espanol!**

**amazon.com**

Corrlinks:  
info@inmateshopper.com



**The Best 500**  
NON PROFIT Organizations  
For Prisoners & Their Families  
THIS IS AMERICA'S ONLY UP TO DATE  
COMPREHENSIVE, PRINT RESOURCE OF NON PROFIT ORGS  
SPECIFICALLY FOR PRISONERS

Indexed by State, Name of Org and Subject  
Find the help and info you need Fast!

Legal Resources  
Legal Family Care  
Legal Children  
Legal Research  
Civil Rights

Health & Health Care  
Substance Abuse  
Veterans Issues  
Voting Rights  
Women's Issues

Release & Re-entry  
Inmate Language  
Inmate Issues  
Prison Services & Products  
Mental Health



contract, Corizon was not required to staff most facilities overnight.

The Minnesota Department of Corrections was held liable for nearly \$1.8 million in wrongful death and medical negligence cases during the period when the state contracted with Corizon or CMS.

In October 2012, a jury in Washington County awarded Minnesota prisoner Stanley Riley more than \$1 million after finding a Corizon contract physician, Stephen J. Craane, was negligent in providing medical treatment. The *Star-Tribune* reported that Riley suffered from what turned out to be cancer and had written a series of pleading notes to prison officials. One read, "I assure you that I am not a malingeringer. I only want to be healthy again."

In May 2013, the state paid \$400,000 to settle a lawsuit over the death of a 27-year-old prisoner at MCF-Rush City. Xavius Scullark-Johnson, a schizophrenic, suffered at least seven seizures in his cell on June 28, 2010. Nurses and guards didn't provide him with medical care for nearly eight hours. According to documents obtained by the *Star-Tribune*, Scullark-Johnson was found "soaked in urine on the floor of his cell"

and was "coiled in a fetal position and in an altered state of consciousness that suggested he had suffered a seizure." An ambulance was called several hours later but a nurse at the prison turned it away, apparently due to protocols to cut costs. Corizon settled the lawsuit for an undisclosed sum in June 2013. See: *Scullark v. Garin*, U.S.D.C. (D. Minn.), Case No. 0:12-cv-01505-RHK-FLN.

## Philadelphia, Pennsylvania

IN PHILADELPHIA, MAYOR MICHAEL A. Nutter has been accused of being too loyal to his campaign contributors, including Corizon. The company donated \$1,000 to Nutter's 2012 campaign committee several months before the city renewed Corizon's contract to provide medical care to 9,000 prisoners in Philadelphia's prison system. Further, PHS donated \$5,000 to Nutter's mayoral campaign in 2008.

The contract renewal would have

been routine except for the fact that Corizon's performance in Philadelphia has been far from stellar. In July 2012 the company agreed to pay the city \$1.85 million following an investigation that found Corizon was using a minority-owned subcontractor that did no work, which was a sham to meet the city's requirements for contracting with minority-owned businesses.

The renewed year-to-year Corizon contract, worth \$42 million, began in March 2013. Nutter's administration was accused of using the year-to-year arrangement to avoid having the contract scrutinized by the city council; the city's Home Rule Charter requires all contracts of more than one year to be reviewed by

**ColdCrib**  
#1 JAILHOUSE CATALOG  
ISSUE#3 OUT NOW!  
3 FREE Non-Nude PHOTOS INCLUDED!  
ONLY \$10  
www.coldcrib.com

WITH PURCHASE  
INMATES MUST SEND \$10  
TO GET YOUR OWN MULTI-PAGE  
CATALOG/MAGAZINE TO ORDER  
HUNDREDS OF LOVELY LADIES PHOTOS  
& OTHER SERVICES FOR THE INCARCERATED

GET MAIL FROM FEMALE PENPALS  
GET LISTED ON OUR PENPAL SITE  
www.COLDCRIB.com  
Send your photo and info along  
with \$30 for 1 FULL year membership  
OR \$30 for Pen-Pal List of up to 50 addresses  
of our registered female PenPals

**ColdCrib communications**  
INMATES CALL CELL PHONES  
\$17/mo Unlimited Calls  
+ \$15 ONE TIME Activation Fee  
Federal, State, County & Local Facility Inmates  
Local Number Provided Same Day!

NOW INMATES CAN ORDER THEIR OWN NUMBERS!  
MAKE EVERY CALL HOME A LOCAL CALL  
NO MORE RUNNING OUT OF MINUTES!  
SEND \$3 FOR PHONE PLAN APPLICATION FORM  
OR HAVE YOUR LOVED ONES ORDER ONLINE  
www.ColdCribCommunications.com

SPECIAL OFFER  
BEST 4X6  
PHOTOS  
VARIOUS BACKSHOTS & POSITIONS  
SET OF 15 (NON-NUDE) SEXY PHOTOS  
ONLY \$16  
MUST ADD \$2 S/H FOR ALL ORDERS

INMATES MUST SEND FACILITY CHECK OR MONEY ORDERS  
COLD CRIB  
PO BOX 682407  
FRANKLIN TN 37069

**PRISONER ASSISTANT**  
REHABILITATION AND REENTRY PLANNING

Join Our Exclusive Membership, Open a Bank Account and Gain Access to Our Services!  
We only provide services to our clients, no exceptions. **MEMBERS ONLY**

Bank Account under your social security number. Deposits, Statements, Money Orders, Bank Checks, Green Dot, Stamp Exchange, Wire Transfers, Direct Deposit & PayPal. **BANKING & FINANCE**

Prisoner Concierge  
Internet Purchases, Gift Cards, Greeting Cards, Lottery, Sporting News & Current Events, People Search, Personal Shopper. "If It Can Be Done, We Will Try To Do It", see our catalog for more.

We can do any Graphic Design project. Printed Material, Musical Emails, Creative Writing, Photo Reproduction & Forwarding, Book Publishing, Book Cover Design, Press Releases, Portfolio Creation, and Website Building. **GRAPHIC**

Virtual Office  
Mailboxes, Emails, Faxes, Texts, Scanning, Copies, Typing, Storage, Document Preparation, Internet Research, Prepaid, Contract & Computer Aided Phones.

Place your profile on [prisonerassistant.com](http://prisonerassistant.com) and access our Special Features; Classifieds, Portfolios, Posts & Blogs, Market Place and Sponsor a Prisoner. **social content media**

PO Box 704-AD1  
Lake Harmony, PA 18624-0704  
[www.prisonerassistant.com](http://www.prisonerassistant.com)  
[info@prisonerassistant.com](mailto:info@prisonerassistant.com)  
(570) 722-5800

For more information - send \$4.50 to "Prisoner Assistant" for an Application Package and 80 page color catalog. If you send an SASE you will only receive a brochure.

Business Development **JOIN NOW!** Credit Development

The services below are available to all prisoners - not just our clients

From E-Newsletter update  
We have reviewed our E-Newsletter efforts via Corlinks and the benefits/inmate costs involved. The new E-newsletter arrival date will fluctuate and the frequency will be up to 5 times a month containing information relevant to Prisoner Assistant and reentry planning. Sign Up Today! [Info@prisonerassistant.com](mailto:Info@prisonerassistant.com)

**Banking and Financial Management Course**  
120 pages, complete course with 8 chapters and exams. Transcript and Certificate available. Send \$25.00 to Prisoner Assistant at the address above with a request for the course. Open to Everyone.

**Personal Reentry Guide and Journal**  
233 pages, complete course with 7 chapters and exams. Transcript and Certificate available. Send \$30.00 to Prisoner Assistant at the address above with a request for the course. Open to Everyone.



## Privatized Healthcare Problems (cont.)

the council. Further infuriating opponents of the contract, Corizon was not the lowest bidder. Correctional Medical Care (CMC), a competitor, submitted a bid that would have cost the city \$3.5 million less per year than Corizon. Philadelphia Prison Commissioner Louis Giorla defended the city's decision to award the contract to Corizon at a council hearing; however, he declined to answer questions as to why the administration considered Corizon's level of care to be superior to that provided by CMC.

Three union contracts with Corizon covering 270 of the company's workers in Philadelphia's prison system expired on November 26, 2013. Corizon demanded benefit cuts, including changes in employee healthcare programs, to offset wage increases promised under the company's contract with the city. A strike was averted in December 2013 when the mayor's office intervened and both sides reached a settlement. The *Philadelphia Daily News* reported that the new union contracts provide wage increases but also include a less-generous health insurance plan for Corizon employees.

Since 1995, Corizon and its predecessor, PHS, have received \$196 million in city contracts. The company's contract was terminated for several months in 2002 as a result of complaints that a diabetic prisoner had died after failing to receive insulin. The city renewed the contract anyway, cit-

ing affordability and pledging increased oversight. The city's law department estimates that Philadelphia has paid over \$1 million to settle lawsuits involving claims of deficient prison healthcare; the largest settlement to date is \$300,000, paid to a prisoner who did not receive eye surgery and is now partially blind.

Based upon the number of lawsuits filed against Corizon alleging inadequate medical care, its use of a sham subcontractor and the company's treatment of its own employees, it appears that maintaining the status quo – not best practices – may be the controlling factor in Philadelphia's continued relationship with Corizon.

### Allegheny County, Pennsylvania

ON SEPTEMBER 30, 2013, A PRISONER jumped from the top tier of a pod at the Allegheny County Jail. Following an investigation, authorities refused to make public their findings and declined to disclose the prisoner's injuries, citing medical privacy laws. The prisoner, Milan Karan, 38, was not transported to the hospital until the following day.

A spokesperson for Corizon, which provides medical care at the 2,500-bed jail, defended the nearly 24-hour delay by noting the prisoner "was under observation" before being sent to a hospital.

In December 2013, the *Pittsburgh Post-Gazette* reported that Corizon was having difficulty staffing the Allegheny County Jail. When the newspaper requested a comment from Corizon vice president

Lee Harrington, Harrington claimed he had no knowledge of staffing problems – despite having previously received emails from the facility's warden about that exact issue.

The staffing problems resulted in prisoners not receiving their medication in a timely manner. In emails obtained by the *Post-Gazette*, Warden Orlando Harper wrote to Harrington in October 2013, noting, "We are continuing to experience issues pertaining to the following: 1. Staffing, 2. Medication distribution." Also, on November 17, 2013, Deputy Warden Monica Long sent an email to Corizon and jail staff. "I was just informed by the Captain on shift, the majority of the jail has not received medication AT ALL," she stated, adding, "Staffing is at a crisis."

That crisis had been ongoing since Corizon assumed the medical services contract at the facility on September 1, 2013. Before the \$62.55 million, five-year contract was awarded, Corizon vice president Mary Silva wrote in an email that it was imperative the jail have "adequate staffing on ALL shifts." That promise was made despite Corizon laying off many of the former employees of Allegheny Correctional Health Services, the jail's previous healthcare provider.

Allegheny Correctional had provided four full-time and one part-time physician during its contract tenure. Corizon reduced the number of doctors to one full-time and one part-time physician. Allegheny Correctional also employed three psychiatrists and one psychologist. Corizon's contract

## Support Prison Legal News with these beautiful gifts!

CALL **561-360-2523**, MAIL ORDER OR USE WEB FORM

[HTTP://WWW.PRISONLEGALNEWS.ORG/](http://www.prisonlegalnews.org/)



## Hand Embroidered Greeting Cards

Made by women prisoners in Cochabamba, Bolivia. Each card is individually made, no two are identical. The prisoners are paid a fair wage for each card and keep 100% of the pay to support themselves and their families. Local fair trade non-profits in Bolivia supply the materials for the cards. **\$6.**

**Hand Made Hemp Tote Bag** All natural hemp tote bag hand made in Vermont with the Prison Legal News logo on both sides, in red and black. Great for carrying books, groceries, and more! Stamped on the inside that no sweatshop, prison or child labor was used in its manufacture. **\$12.**

\$6 shipping and handling for orders under \$50.

requires that it provide one full-time psychiatrist and a part-time psychologist.

In January 2014, the United Steelworkers union (USW) filed a petition with the National Labor Relations Board to unionize Corizon employees at the Allegheny County Jail, including nurse practitioners, RNs, physician assistants and psychiatric nurses. USW representative Randa Ruge indicated that the Corizon workers had approached the union for representation due to intolerable working conditions.

"Our folks [Corizon employees] are in danger of losing their licenses to practice by some of the things that the company has them doing," she said. Ruge told the *Post-Gazette* that the jail had run out of insulin for more than a week and Corizon supervisors had "countermanded doctors' orders."

Several weeks after the USW filed the labor petition, a Catholic nun who worked as an RN at the jail was fired by Corizon, allegedly for union organizing activities. Sister Barbara Finch was dismissed after she openly expressed concerns about staffing, patient care and safety at the facility. The USW filed an unfair labor complaint against Corizon regarding Finch's dismissal, claiming she was terminated in retaliation for her union activities.

"This is a clear case of intimidation and union-busting at its worst," said USW President Leo W. Gerard. "Sister Barbara has been an outspoken advocate of change for these courageous workers and their patients, and this kind of illegal and unjust

action, unfortunately, is par for the course with Corizon."

On February 14, 2014, Corizon employees at the Allegheny County Jail voted overwhelmingly to unionize. "The next step is getting to the bargaining table and getting Corizon to bargain in good faith and get some changes made in the health system at the jail," said Ruge.

The previous week, Allegheny County Controller Chelsa Wagner stated she had "grave and serious concerns" about medical care at the facility, including issues related to staffing and treatment for prisoners with certain mental health conditions. "I regard the current situation as intolerable and outrageous, and I fully expect necessary changes to be urgently implemented," she wrote in a letter to Corizon.

### Polk County, Iowa

ON AUGUST 29, 2013, IEASHA LENISE Meyers, incarcerated at the jail in Polk County, Iowa on a probation violation, gave birth on a mattress on the floor of her cell. Her cellmates assisted with the delivery. Earlier, when Meyers, 25, had complained of contractions, a Corizon nurse called an offsite medical supervisor and was told to monitor the contractions and check for water breaking.

Despite Meyers having been twice sent to a hospital earlier the same day, and pleading that she was about to give birth, the nurse did rounds in other parts of the jail. Guards reportedly did not check on Meyers as required, even though the birth could

be seen on a nearby security monitor. Only after the baby was born was medical care provided. Sheriff Bill McCarthy defended the actions of jail staff.

### Corizon Employee Misconduct

LIKE MOST PRIVATE CONTRACTORS THAT provide prison-related services, Corizon tends to cut costs in terms of staffing and operational expenses. As noted above, this includes paying lower wages, providing fewer or inferior benefits and hiring less qualified workers who can be paid less. Sometimes, however, these practices result in employees more like to engage in misconduct.

At the Pendleton Correctional Facility in Indiana, a Corizon nurse was arrested and charged with sexual misconduct, a Class C felony. The *Herald Bulletin* reported that in April 2013, when Colette Ficklin was working as a contract nurse for Corizon, she convinced a prisoner to fake chest pains so they could be alone in an exam room. A guard told internal affairs officers that she witnessed Ficklin and the prisoner engaging in sex acts in the prison's infirmary. [See: *PLN*, Sept. 2013, p.17].

In March 2013 at the Indiana State Prison in Michigan City, a Corizon practical nurse was charged with drug trafficking and possession with intent to distribute. Phyllis Ungerank, 41, was arrested and booked into the LaPort County Jail after attempting to smuggle marijuana into the facility. [See: *PLN*, July 2012, p.50].

A Corizon nurse at the Volusia County Branch Jail in Daytona Beach, Florida



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription! Quarterly drawing WINS \$100! (Void in New York) (Last Quarter's winner from Somers, CT.) TELL YOUR FRIENDS! ACT NOW!!

PO Box 2063 • Fort Walton Beach FL. 32549  
[www.InmateMagazineService.com](http://www.InmateMagazineService.com)

## Inmate Magazine Service



## Privatized Healthcare Problems (cont.)

was fired after officials learned she was having sex with and giving money to a prisoner. Valerie Konieczny was terminated on December 18, 2012 when the jail was contacted by the brother of prisoner Randy Joe Schimp, who had written in a letter that a nurse was having sex with him and depositing money into his jail account. Investigators determined that Konieczny was the nurse who had sex with Schimp at both the Volusia County facility and another branch jail in 2011.

In New Mexico, Corizon physician Mark Walden was accused of fondling prisoners' genitals and performing prostrate exams that were "excessive and inappropriate in terms of length and method." At times, Walden reportedly did not wear gloves during the prostate exams. He was accused of sexually abusing 25 or more male prisoners while employed as a doctor at two privately-operated facilities, the Guadalupe County Correctional Facility in Santa Rosa and Northeast New Mexico Detention Facility in Clayton.

Lawsuits were filed against Walden, Corizon and private prison operator GEO Group, and Walden's medical license was suspended in December 2013. The suits claim that Corizon allowed Dr. Walden to work at the Clayton prison "despite knowing of the risk of sexual abuse and having the ability to know that [he] was repeatedly sexually abusing patients" at the Santa Rosa facility. [See: *PLN*, Sept. 2013, p.47].

### The Privatization Model

ECONOMICS PROFESSORS KELLY BEDARD and H.E Frech III at the University of California at Santa Barbara examined the privatization of correctional medical services in their research study, "Prison Health Care: Is Contracting Out Healthy?," published in *Health Economics* in November 2009.

They concluded: "We find no evidence to support the positive rhetoric regarding the impact of prison health care contracting out on inmate health, at least as measured by mortality. Our findings of higher inmate mortality rates under contracting out are more consistent with recent editorials raising concerns about this method of delivering health care to inmates."

Today, five years after the Bedard-Frech report was published, it has the benefit of hindsight. Since the report was written, its findings and conclusions have been reaffirmed in prisons and jails across the nation that have contracted with private companies to provide medical care to prisoners. Cost reductions in the provision of correctional healthcare tend to result in greater inefficiencies that lead to poorer outcomes. Consequently, for-profit medical contractors may actually be increasing morbidity and mortality in prison and jail populations.

Many governmental entities are willing to outsource correctional healthcare to private companies; reasons for doing so include cutting costs, risk management and removing healthcare duties from corrections departments. If Corizon's record with respect to providing medical care to prisoners seems dismal, the company can always defend its actions by stating it does what it has been hired to do: Cut costs for its customers. And those costs have been rising due to an increasingly aging, and thus medically-needy, prison population. [See: *PLN*, Nov. 2012, p.22; Dec. 2010, p.1].

With respect to risk management, litigation is not a compelling issue within the prison healthcare industry and Corizon views lawsuits as simply a cost of doing business. "We get sued a lot, but 95% or 97% of cases were self-represented cases," ex-CEO Rich Hallworth was quoted in an August 2013 article. He added that most lawsuits settle for an average of less than \$50. Of course it is difficult for prisoners to obtain representation to pursue litigation – unless it's a wrongful death case, and then usually their family or estate is doing the suing.

Nor are the public agencies that contract with private medical providers greatly concerned about their litigation records. In fact, when Florida contracted with Corizon and Wexford Health Sources to provide medical care for the state's entire prison system, the Florida Department of Corrections didn't ask the companies about their litigation histories – such as lawsuits raising claims of deliberate indifference, negligence and medical malpractice.

"What really troubles me about this is the fact that the department didn't ask these very basic, elemental questions any system would ask," observed ACLU National Prison Project staff attorney Eric Balaban. "These two vendors were taking

- Post-Conviction Specialists (Habeas Corpus/Coram Nobis/PRP/Certiorari/SVP/Sentence Modification/DNA and more)
- We Cover all 50 States and D.C., Federal District Courts, Federal Courts of Appeal, and Supreme Court
- Comprehensive investigative services available
- Experts and specialists available
- Staff attorney with over 40 years litigation experience
- Professional legal staff with extensive post conviction experience
- Multi-lingual services available
- FREE initial consultation
- Payment plans available

### Legal Insights Inc.

25602 Alicia Parkway Suite 323

Laguna Hills, CA 92653

714-941-0578

info@legalinsights.org

www.legalinsights.org

501(c)(3) Non-Profit Organization

The correctional healthcare industry, comprised of only a few large companies, is highly competitive. When one company loses a contract, another is more than will-

According to Dr. Marc Stern, the court-appointed special master in Idaho, “whoever delivers prison healthcare is doing it on less than adequate funding because that’s how much municipalities, state legislatures and county commissions are allocating.” He noted that privatization can be good in some cases and bad in others, depending on the level of oversight by the contracting public agency.

Why? Because continuity maintains

PRISON INMATES ONLINE

Home

Sort Inmates

Photo/Video

Inmate Writings

Community

Services

Forum



Actual Profile Layout



Like

Send

Be the first of your friends to

Favorite

Message

Share

John Inmate #12345

Prison Correctional Facility

123 Any St

Cell #1 Bed #1

Anywhere, CA 12345




BEST VALUE

Among Prison Websites

SHARE THESE

PHOTOS

ARTWORK

TATTOO PICS

VIDEOS

Get PEN-PALS

by posting YOUR

profile ONLINE!

\$50 Lifetime Profile

\$10 Mini Profiles

Our Social Network Includes:

twitter

facebook

FEATURED INMATES

Inmate

Inmate

Inmate

Inmate

Inmate

Inmate

GET MAIL

Our Message Service

let's people send you

messages directly

through your profile.

We collect messages

you receive and mail

them to you each

week. \*Service Not

available in all prisons.

BLOGS

POETRY

LEGAL DOCS

Helping Inmates

Since 2000

For a FREE brochure/application:

Send a Self Addressed Stamped Envelope (Size #10) or 2 first class stamps to:

PRISON INMATES ONLINE

#PLN Brochure

8033 W Sunset Blvd #7000

Los Angeles CA 90046

We cannot send brochures to STATE inmates in:

FL, MO, PA, or VA. Message Service available in

facilities that allow 3rd party mail. NY State Inmates

are prohibited from Message Service.



## Privatized Healthcare Problems (cont.)

cost control, which is the driving force behind privatization of prison and jail medical services.

### Conclusion

THE INTENT OF THIS ARTICLE WAS TO REVIEW Corizon's performance and practices based on publicly-available information, including news reports and court records. Although the company was formed in June 2011, its two predecessor firms, PHS and CMS, littered the news and judicial dockets over the years with lawsuits and articles involving cases of inadequate healthcare. Thus, the sins of Corizon's parents, CMS and PHS, are forever linked with the progeny of their merger.

Such past misdeeds could be explained away had Corizon adopted a new, post-merger culture that was removed from prior practices under PHS and CMS. However, many of Corizon's mid-level and top executives – including ex-CEO Rich Hallworth, former president Stuart Campbell, chairman Richard H. Miles and a number of vice presidents – were previously executives with PHS or CMS. It was during their tenure at those companies that numerous cases involving deficient medical care occurred.

The corporate culture of Corizon, as well as its business model, appears to be largely the same as those of its predecessors. Therefore, the only thing that may have changed as a result of the merger that created Corizon is the company's name. ■

*Gregory Dober is a freelance writer in health-care and ethics. He has been a contributing writer for PLN since 2007 and co-authored*

*Against Their Will: The Secret History of Medical Experimentation on Children in Cold War America, published by Palgrave in 2013. [See: PLN, Nov. 2013, p.36].*

Sources: *Bloomberg News, Forbes, www.businessweek.com, Philadelphia Inquirer, Philadelphia Daily News, The American Independent, Pittsburgh Tribune-Review, St. Louis Business Journal, www.broward-bulldog.org, Miami Herald, WHAS-TV, The*

*Tennessean, Courier-Journal, Idaho Business Review, Associated Press, The Arizona Republic, Maine Public Broadcasting Network, Bangor Daily News, WANE-TV, Raton Range, Des Moines Register, Star-Tribune, The Nation, The Florida Current, www.usw.org, KPHO-TV, WANE-TV, Tucson Citizen, WCAV-TV, www.wdrb.com, www.modern-healthcare.com, www.cochs.org, www.wndu.com, www.afsc.org, www.americanownews.com*

## Florida County Agrees to Pay \$4 Million to Deceased Prisoner's Estate

by Derek Gilna

NICHOLAS T. CHRISTIE, INCARCERATED at the Lee County jail in Ft. Myers, Florida, died on March 31, 2009 after being repeatedly pepper sprayed by deputies while strapped to a restraint chair. Following three years of litigation, Lee County officials agreed in May 2013 to pay a record settlement of \$4 million to Christie's estate.

The jail's for-profit medical contractor, Prison Health Services (PHS), now known as Corizon, was named as a defendant in the federal lawsuit and included in the settlement agreement.

The § 1983 suit raised claims related to Christie's death under the "Fourth, Eighth and/or Fourteenth Amendments to the United States Constitution, the laws of the United States, and the laws of the State of Florida."

The complaint alleged that Christie was "restrained to a chair with a hood over his head and face for several hours in the custody of the Lee County Sheriff, while being detained on a misdemeanor trespass

charge," and that medical staff at the jail failed to provide him with adequate care after he showed signs of respiratory distress during and after that incident. Medical personnel, the lawsuit stated, "acted willfully, wantonly, maliciously, and with reckless and callous disregard for and deliberate indifference to the serious medical and mental health needs of Nick Christie, and in a manner that shocks the conscience and offends traditional notions of decency, all of which led to his wrongful and untimely death."

According to the complaint, prior to and during his placement in the restraint chair, Christie disclosed to jail staff that he had "certain serious medical conditions..., including, but not limited to, Chronic Obstructive Pulmonary Disease (COPD), a heart condition, cardiovascular disease, atrial fibrillation, obesity, gout, back pain, constipation, and umbilical hernia, all of which was recorded and documented in Mr. Christie's PHS medical chart/record."

## EXECUTIVE CLEMENCY

For Info. On Sentence Reduction through Executive Clemency:

NATIONAL CLEMENCY PROJECT  
3907 N. Federal Highway, # 151  
Pompano Beach, FL 33064  
954-271-2304



(35-Years of Clemency & Parole Assistance)  
(Transfers Under The Int'l Prisoner Treaty)

## Alexander Byrd Optics

Single Vision Transitions eyeglasses

**\$119.95 + S&H**

with Lifetime Frame Warranty

To receive order form and details write to:

2150 Wise St. #4769  
Charlottesville, VA 22905

or have someone go to:

abyrdoptics@gmail.com  
www.abyrdoptics.com

Further, Christie's wife had contacted jail officials to advise them of her husband's medical conditions and to inform them he had not been taking his medication regularly, which often caused him to act in an erratic manner. When Christie was booked into the jail, officials confiscated the medications he had with him and failed to refer him for a proper medical intake evaluation that would have resulted in the jail reissuing his prescribed medications to replace those that were taken.

A report by Florida's state medical examiner found the cause of Christie's death was "hypoxic encephalopathy, following resuscitation for cardiac arrest, due to or as a consequence of cardiogenic shock with congestive heart failure, due to or as a

consequence of physiologic stress, following restraint and noxious effects of Oleoresin Capsicum" – i.e., the pepper spray used by sheriff's deputies.

The often excessive and abusive use of "restraint chairs" by corrections officials has been criticized by prisoners' rights groups and has resulted in litigation in other jurisdictions as well. Unfortunately for Christie, the failure of Lee County jail staff to follow proper procedures and the failure of PHS employees to provide adequate medical care led to his death. And unfortunately for the county and PHS, those failures resulted in a \$4 million settlement to resolve the subsequent lawsuit filed by Christie's estate. See: *Christie v. Scott*, U.S.D.C. (M.D. Fla.), Case No. 2:10-cv-00420-UA-DNF. ■

## Seventh Circuit Upholds Removal of Prisoner's Dreadlocks

THE SEVENTH CIRCUIT COURT OF APPEALS has held that an Illinois prisoner's religious rights were not violated when prison officials required him to cut off his dreadlocks to be transported to a court hearing.

Peter A. Lewis, incarcerated at the Dixon Correctional Center, is a member of a religious sect called the African Hebrew Israelites of Jerusalem. Consistent with the requirements of his faith, Lewis took the voluntary Nazirith vow, which, among other things, committed him to not cut his hair. He had previously filed suit against prison officials, claiming that they infringed his religious freedom by refusing to let him have visits unless he agreed to cut his hair. A 2003 settlement in that lawsuit allowed Lewis to have visitors if he permitted guards to search his dreadlocks for contraband before and after each visit.

Prison officials gave Lewis a choice in January 2004, when he was scheduled to appear in federal court. He could either get a haircut or go to segregation as punishment for eluding (by refusing a haircut) his scheduled court hearing. Lewis chose the haircut, then claimed prison officials knew his court date had been postponed, depriving them of a security concern that justified cutting his hair.

A dispute existed as to what prison officials knew about the court date, and when. It was undisputed, however, that Lewis was transported to court shortly after the origi-

nally-scheduled court hearing. The Seventh Circuit wrote, "it is obvious that transporting prisoners and placing them in courtrooms presents significant security concerns, warranting protective measures."

The appellate court held that prison officials' discretion relative to security-related matters extends to a determination that a particular prisoner's dreadlocks are too thick or dense to be readily searchable on a certain occasion, such as a visit to federal court. There was no evidence that Lewis was treated differently than other similarly situated prisoners, nor that the prison's security concerns were outweighed by his interest in engaging in a sincere religious observance.

The district court's order granting summary judgment to the defendant prison officials was therefore affirmed, and the U.S. Supreme Court denied Lewis' petition for writ of certiorari on October 7, 2013. See: *Lewis v. Sternes*, 712 F.3d 1083 (7<sup>th</sup> Cir. 2013), *cert. denied*.

The Seventh Circuit had previously held that an Illinois prison guard violated a prisoner's First Amendment rights by ordering his dreadlocks to be forcibly cut, and that the guard was not entitled to qualified immunity. However, the appellate court noted that the facts in that case involved "outright arbitrary discrimination rather than a failure merely to 'accommodate' religious rights." [See: *PLN*, April 2013, p.44]. ■

# LEARN TO PROTECT YOUR RIGHTS

## YOU HAVE A RIGHT TO

- Adequate medical care
- Protection from assault
- Humane living conditions
- Safety from officer abuse

Learn how to defend your basic human rights with the comprehensive litigation guide, ***Protecting Your Health and Safety***, 2nd edition, written specifically for prisoners who are unable to receive help from a lawyer.

Written by Robert E. Toone  
Edited by Dan Manville  
*A Project of the Southern Poverty Law Center\**

**COST** \$16 total  
(\$10 + \$6 shipping/handling)  
FREE shipping/handling for orders from Prison Legal News over \$50

## ORDER A COPY

Send a check  
or money order to:  
**Prison Legal News**  
**PO Box 1151**  
**Lake Worth, FL 33460**  
**561-360-2523**

*Be sure to include your name, identification number (if any), and mailing address. We also accept VISA and Mastercard. If using a credit card, please include the type of card (VISA or Mastercard), card number, and expiration date.*

This book does not deal with legal defense against criminal charges or challenges to convictions that are on appeal. Edition last revised in 2009.

\*Please do not send orders to the Southern Poverty Law Center.

## From the Editor

by Paul Wright

**T**HIS MONTH'S COVER STORY ON CORIZON, the company formed by the merger of Prison Health Services and Correctional Medical Services, is our most recent reporting on an issue that has been ongoing for the past several decades. Namely, the prison HMO model whereby corrections agencies contract with for-profit companies to provide medical services to prisoners, while the companies' business model requires that they delay or deny treatment in order to make a profit. Not surprisingly this results in a pattern of deaths, injuries and pain suffered by prisoners who have no other options for obtaining medical care.

What is interesting is that despite decades of abuse, corruption and fraud, the government entities that contract with for-profit prison medical providers still fail to adequately monitor and audit their performance. Even after repeated contractual violations, if one company's contract is canceled or expires, the government typically awards the contract to another corporation with similar performance problems. Besides Corizon, other prison medical care companies include Wexford Health Sources, Centurion, NaphCare, Armor Correctional Health Services, Correct Care Solutions and Conmed Health Management.

The notion that such companies should

actually be required to provide the medical services for which they are being paid with taxpayer dollars seems alien to the government officials who enter into these contracts. If anyone has information on services that are being contracted by corrections agencies but not being performed by medical care providers or other private prison companies, please contact us with details.

PLN's website has over 20,000 articles related to prisons and jails, over 7,000 legal documents in our brief bank and more than 5,000 documents in our publications library, and receives over 100,000 visitors a month.


## Second Circuit Vacates Magistrate's Judgment Entered without Consent

**O**N MARCH 6, 2013, THE SECOND Circuit Court of Appeals vacated the summary judgment dismissal of a New York prisoner's lawsuit, finding he had not consented to having the case decided by a magistrate judge.

Willie James Yeldon filed suit in federal court against numerous New York and Wyoming prison and community-based doctors under 42 U.S.C. § 1983.

Although he expressly declined to consent to the appointment of a magistrate

We are in the process of redesigning our websites for Prison Legal News, the Human Rights Defense Center and the Campaign for Prison Phone Justice, to make them easier to use and navigate and to incorporate all the technological updates that have occurred since our last website design. The new sites should be online within the next several months.


As we move into 2014, our goal is to increase our circulation by adding another 1,000 print subscribers. You can help by encouraging others to subscribe or giving someone a gift subscription. Please consider doing both, and enjoy this issue of PLN. 

judge, the district court entered a February 8, 2008 order referring the case to a magistrate pursuant to 28 U.S.C. § 636(c). The magistrate judge then granted summary judgment to the defendants on all of Yeldon's claims.

On appeal, the Second Circuit noted it had previously held in *N.Y. Chinese TV Programs, Inc. v. U.E. Enterprises*, 996 F.2d 21 (2d Cir. 1993) that consent to appoint a magistrate judge must be "truly voluntary," and "consent of all parties must be clear and express or the requirement would mean little."

Recognizing that Yeldon had expressly refused to consent to a magistrate, the Court of Appeals could not find on the record before it that he gave implied consent by failing to object to the district court's February 2008 order.

"As a pro se litigant, he may not have appreciated that participating in proceedings before the Magistrate Judge could impugn the effectiveness of his written refusal to consent," the appellate court wrote.

Since "the lack of consent is a jurisdictional defect that cannot be waived," the Court of Appeals found the magistrate lacked authority to enter final judgment under 28 U.S.C. § 636(c)(1), and that the Court consequently lacked jurisdiction to review that judgment. The Second Circuit therefore vacated the judgment, holding that Yeldon had not consented to the appointment of a magistrate judge. See: *Yeldon v. Fisher*, 710 F.3d 452 (2d Cir. 2013). 

# See Their Problem

The Answer:  
Is  **CLEAR** Electronic Cigarettes



**LOCK-UPS**

**Clearly the Safer Option**

**Contraband Danger**

- If They can't Inspect they Must Reject
- End \$100 a Pack Black Market

Ask the Warden for **LOCK-UPS**

# State of Washington Prison Phone Justice Campaign!

*Prison Phone Justice Project needs your help for statewide campaign!*

**W**hile much progress has been made in reducing the costs of long distance prison calls, we are still fighting to reduce the high costs of in-state prison and jail calls at the local level. In January 2014, the Human Rights Defense Center (HRDC), the parent organization of Prison Legal News, reopened its Seattle office to launch the Washington Prison Phone Justice Campaign.

This is our first statewide phone justice campaign, and we're excited to have people involved on both the local and national levels who are dedicated to ending the exorbitant phone rates and kickbacks associated with the prison phone industry. David Ganim, HRDC's national Prison Phone Justice Director, has already been obtaining the phone contracts and rates for all 39 county jails in Washington, as well as data from the Washington Department of Corrections.

We recently hired a local campaign director, Carrie Wilkinson, who will manage our office in Seattle and coordinate the statewide campaign. Washington prisoners and their families pay some of the highest phone rates in the nation, and we need your help to win this battle!

Here's how you can help – first, please visit the Washington campaign website:

**[www.wappj.org](http://www.wappj.org)**

There you can see all the ways you can make a difference. The site allows you to sign up for the campaign and upload videos and share blog entries about how high prison phone rates make it difficult for you to stay in touch with your incarcerated loved ones. You can also upload an audio message, and even call in your story to **1-877-410-4863**, toll-free 24 hours a day, seven days a week! We need to hear how you and your family have been affected by high prison phone rates. If you don't have Internet access, you can mail us a letter describing your experiences and we'll post it. Send letters to HRDC's main office at: **HRDC, Attn: WA Phone Justice Campaign, P.O. Box 1151, Lake Worth, FL 33460**. Washington state prisoners can mail us letters and send a copy of this notice to their family members so they can get involved.

By choosing to participate in the Washington Prison Phone Justice Campaign, you will be playing a key role in ending the unfair phone rates that prisoners' families have to pay. We cannot win this battle without your help, so please visit the campaign website and share your experiences! Donations are also welcome and greatly appreciated, and can be mailed to the above address or made online via the campaign site. Thank you for your support!



# Why There's an Even Larger Racial Disparity in Private Prisons Than in Public Ones

by Katie Rose Quandt

IT'S WELL KNOWN THAT PEOPLE OF color are vastly overrepresented in U.S. prisons. African-Americans and Latinos constitute 30 percent of the U.S. population and 60 percent of its prisoners. But a new study by University of California-Berkeley researcher Christopher Petrella addresses a fact of equal concern. Once sentenced, people of color are more likely than their white counterparts to serve time in private prisons, which have higher levels of violence and recidivism and provide less sufficient health care and educational programming than equivalent public facilities. [See: *PLN*, March 2013, p.16].

The study compares the percentage of prisoners identifying as black or Hispanic in public prisons and private prisons in nine states. It finds that there are higher rates of people of color in private facilities than public facilities in all nine states studied, ranging from 3 percent in Arizona and Georgia to 13 percent in California and Oklahoma. According to Petrella, this disparity casts doubt on cost-efficiency claims made by the private prison industry and demonstrates how ostensibly "colorblind" policies can have a very real effect on people of color.

The study points out an important link between prisoner age and race. Not only do private prisons house high rates of people of color, they also house low rates of individuals over the age of 50 – a subset that is more likely to be white than the general prison population. According to the study, "the states in which the private versus public racial disparities are the most pronounced also happen to be the states in which the private versus public age disparities are most salient." (California, Mississippi and Tennessee did not report data on prisoner age).

Private prisons have consistently lower rates of older prisoners because they often contractually exempt themselves from housing medically expensive – which often means older – individuals, which helps them keep costs low and profits high. This is just another example of the growing private prison industry's prioritization of profit over rehabilitation, which activists

say leads to inferior prison conditions and quotas requiring high levels of incarceration even as crime levels drop. The number of state and federal prisoners housed in private prisons grew by 37 percent from 2002 to 2009, reaching 8 percent of all prisoners in 2010.

The high rate of incarceration among young people of color is partly due to the war on drugs, which introduced strict sentencing policies and mandatory minimums that have disproportionately affected non-white communities for the past 40 years. As a result, Bureau of Justice Statistics data shows that in 2009, only 33.2 percent of prisoners under 50 reported as white, as opposed to 44.2 percent of prisoners aged 50 and older.

So when private prisons avoid housing older prisoners, they indirectly avoid housing white prisoners as well. This may explain how private facilities end up with "a prisoner profile that is far younger and far 'darker' ... than in select counterpart public facilities."

Private prisons claim to have more efficient practices, and thus lower operating costs, than public facilities. But the data suggest that private prisons don't save mon-

ey through efficiency, but by cherry-picking healthy prisoners. According to a 2012 ACLU report, it costs \$34,135 to house an "average" prisoner and \$68,270 to house an individual 50 or older. In Oklahoma, for example, the percentage of individuals over 50 in minimum- and medium-security public prisons is 3.3 times that of equivalent private facilities.

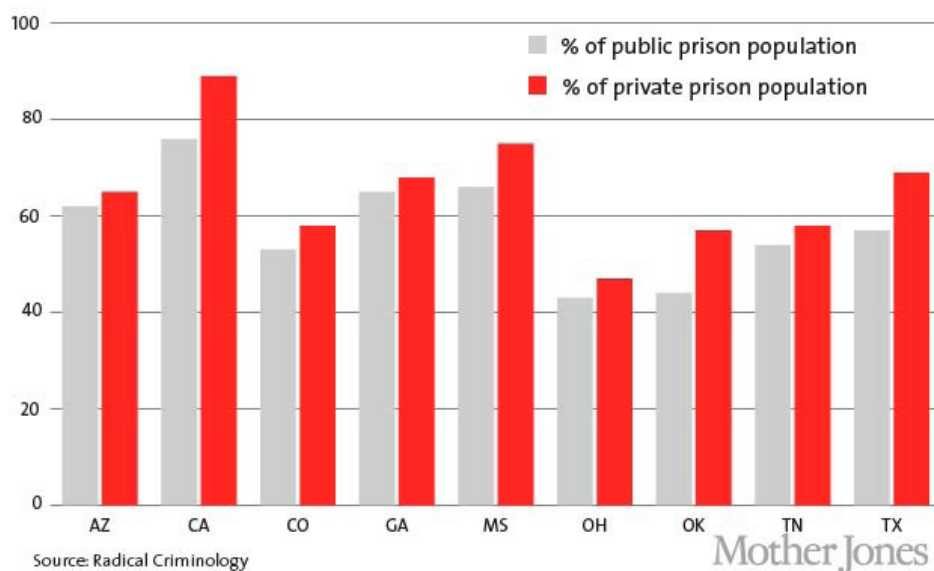
"Given the data, it's difficult for private prisons to make the claim that they can incarcerate individuals more efficiently than their public counterparts," Petrella tells *Mother Jones*. "We need to be comparing apples to apples. If we're looking at different prisoner profiles, there is no basis to make the claim that private prisons are more efficient than publics."

He compared private prisons to charter schools that accept only well-performing students and boast of their success relative to public schools.

David Shapiro, former staff attorney at the ACLU National Prison Project, agrees. "The study is an example of the many ways in which for-profit prisons create an illusion of fiscal responsibility even though the actual evidence of cost savings, when apples are compared to apples, is doubtful

## People of Color in Public vs. Private Prisons

In every state studied, the rate of black and Hispanic inmates is higher within private prisons



at best," he says. "Privatization gimmicks are a distraction from the serious business of addressing our addiction to mass incarceration."

But in addition to casting doubt on the efficacy of private prison companies, Petrella says his results "shed light on the ways in which ostensibly colorblind policies and attitudes can actually have very racially explicit outcomes. Racial discrimination cannot exist legally, yet still manifests itself."

Alex Friedmann, managing editor of *Prison Legal News*, calls the study a "compelling case" for a link between age disparities and race disparities in public and private prison facilities. "The modern private prison industry has its origins in the convict lease system that developed during the Reconstruction Era following the Civil War, as a means of incarcerating freed slaves and leasing them to private companies," he says. "Sadly, Mr. Petrella's research indicates that the exploitation of minority prisoners continues, with convict chain gangs being replaced by privately-operated prisons and jails."

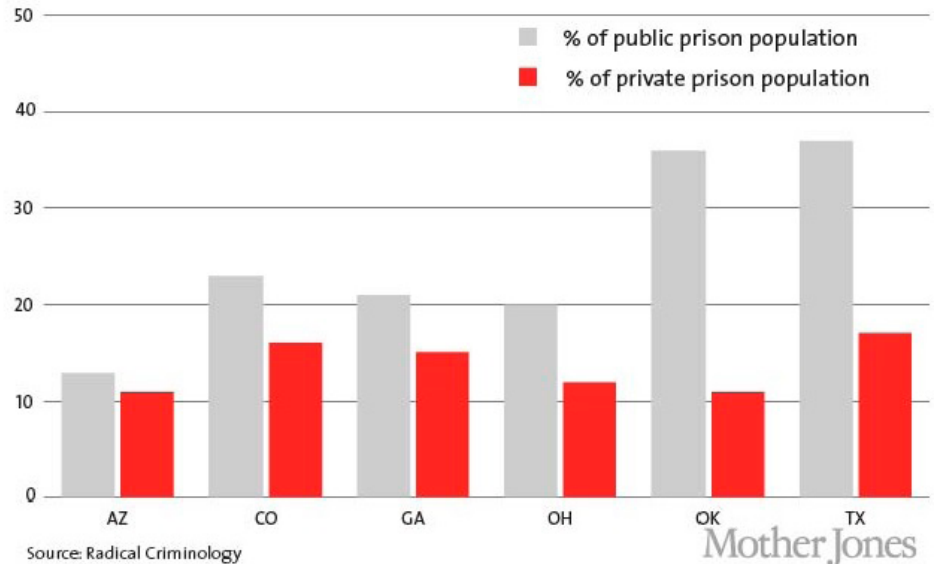
\* The study draws on data from nine

states – Arizona, California, Colorado, Georgia, Mississippi, Ohio, Oklahoma, Tennessee and Texas – selected because they house at least 3,000 individuals in private minimum- and medium-security facilities.

*Katie Rose Quandt is an online editorial fellow at Mother Jones. This article was originally published by Mother Jones (www.motherjones.com) on February 17, 2014; it is reprinted with permission, including the accompanying charts.*

## People Over 50 in Public vs. Private Prisons

In every state studied, the rate of inmates over 50 is lower within private prisons



### ~ THE SENZA COLLECTION ~

SENZA SPECIALIZES IN PROVIDING YOU SEVERAL CHOICES  
ALL NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY - OR - NON NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY  
WE HAVE DIVIDED OUR CATALOGS INTO THESE CATEGORIES:

#### CAUCASIN/AFRICAN-AMERICAN/HISPANIC/ASIAN/MIXED HOTTIES

EACH PAGE OF OUR CATALOGS HAS 99 GLORIOUSLY SEDUCTIVE LADIES POSING JUST FOR YOUR ENJOYMENT.

OVER 250 CATALOGS TO COLLECT AT JUST \$2.50 PER CATALOG

HERE'S A LITTLE FREEBIE FROM SENZA TO YOU!!!

ORDER YOUR FREE SENZA "99 HOTTIES" SAMPLE CATALOG

JUST SEND US TWO U.S. FOREVER OR FIRST CLASS STAMPS AND A SELF ADDRESSED STAMPED ENVELOPE TO:

**SENZA**  
FREE CATALOG OFFER  
P.O. BOX 5840  
BALTIMORE, MD 21282

AND FOR THOSE THAT JUST CANNOT WAIT...TAKE ADVANTAGE OF THIS LIMITED TIME OFFER

#### SENZA'S INTRODUCTORY SPECIAL \*\*\*DIRTY DOZEN\*\*\*

\$19.99 GETS YOU ALL THIS + FREE SHIPPING AND HANDLING

12 EYE POPPING CATALOGS! EACH CATALOG HAS 99 PICS TO CHOOSE FROM ON EACH PAGE

PLUS

12 4X6 PRINTS FROM OUR MIXED HOTTIES SELECTION TO SHOW OFF SENZA'S 4X6'S PRINT QUALITY.

**ALL FOR JUST \$19.99**

REMEMBER YOU MUST: SPECIFY NUDE OR NON-NUDE ON YOUR ORDER

SPECIFY YOUR INSTITUTIONS RESTRICTIONS AS TO THE NUMBER OF PRINTS ALLOWED IN ONE ENVELOPE.

SENZA CORPORATE POLICIES - PLEASE REVIEW THEM CAREFULLY

**ALL SENZA COLLECTION IMAGES ARE SOLD AT A FLAT PRICE OF 0.35 CENTS EACH.**

ANYONE WISHING TO PURCHASE 1000 + PRINTS AT ONE TIME WILL BE GIVEN A FLAT PRICE OF 0.30 CENTS PER IMAGE.

**SENZA HAS A MINIMUM ORDER REQUIREMENT OF: \$15.00 THIS DOESN'T INCLUDE S&H CHARGES.**

**SHIPPING AND HANDLING CHARGES ARE AS FOLLOWS:**

**1 - 5 4x6 PRINTS - \$1.00 PER ENVELOPE / 6 - 15 4x6 PRINTS - \$1.50 PER ENVELOPE / 16 - 25 4x6 PRINTS - \$2.00 PER ENVELOPE**

YOU MUST NOTIFY SENZA ON THE ORDER FORM, THE MAXIMUM NUMBER OF PRINTS YOUR INSTITUTION WILL PERMIT IN EACH ENVELOPE

**SENZA WILL ACCEPT U.S. FIRST CLASS POSTAGE STAMPS AT THE RATE OF \$5.00 FOR EACH BRAND NEW FLAT BOOK OF 20 STAMPS.**

YOU ARE REQUIRED TO KNOW YOUR INSTITUTIONS POLICIES REGARDING WHAT IMAGES ARE ACCEPTABLE INTO YOUR FACILITY INSTITUTION. THERE ARE NO EXCEPTIONS TO THIS POLICY. RETURNED/REJECTED MAIL - YOU WILL HAVE 15 BUSINESS DAYS TO SEND US A SASE WITH A STREET ADDRESS IN WHICH TO MAIL YOUR RETURNED/REJECTED PRINTS. AFTER 15 DAYS THE PRINTS ARE RETURNED TO OUR INVENTORY.

ALL SALES ARE FINAL/NO REFUNDS OR EXCHANGES

## **Arrest-Proof Yourself, by Dale Carson and Wes Denham** **(Chicago Review Press, 2007). 282 pages (paperback), \$14.95.**

*Book review by John E. Dannenberg*

**I**N SHORT, *ARREST-PROOF YOURSELF* IS A colorfully-written manual on how to avoid being arrested. The book's principal thesis is a hypothetical "electronic plantation" where all persons who are arrested – even if later exonerated – must serve an irrevocable life sentence of being blacklisted from future

employment, socially ostracized, etc. as a result of their arrest record. The book is written in street language to garner the attention of younger people who, statistically, are more likely to face arrest. The authors emphatically counsel the reader, wherever possible, to simply avoid being seen by the police; but if stopped, they provide advice on how to act and, more importantly, how *not* to act.

Authors Carson and Denham speak from years of experience: Carson was a former police officer in both state and federal jurisdictions while Denham is a private investigator. Carson, now a defense attorney, today defends the very people who, in *Arrest-Proof Yourself*, he tries to prevent from needing his services. Throughout the book the authors speak about how police officers love to arrest people, which not only makes them happy but also improves their job performance reviews. Accordingly, police are not motivated to help little old ladies cross the street but rather to arrest as many people as they can. The means by which people are targeted for arrest, and whether they are arrested following a police stop, are the central topics of *Arrest-Proof Yourself*.

Those targeted for arrest are not the rich and famous, who have good attorneys and money to influence prosecution decisions, but rather the average person who is less educated and lacks street smarts. Those are the people who comprise the millions arrested each year for misdemeanors, traffic violations and petty crimes – mostly non-violent offenses. *Arrest-Proof Yourself*

examines why they are even stopped by police officers, let alone arrested.

Most people are not arrested for something they do in plain view of the police but for incidental things during the course of a routine stop and search. This commonly occurs when people are pulled over in vehicle stops – such as for a defective brake light – and an incidental search reveals drugs, weapons or stolen property in plain sight. If the suspect doesn't have a good attitude, can't produce ID, registration or insurance, is in the "wrong neighborhood," has outstanding unpaid tickets or warrants, or has medication without a copy of the doctor's prescription, then he or she is likely to be arrested rather than receive a citation. And that arrest record, standing alone, will destroy the person's otherwise clean record for all time due to the ubiquitous online data that follows everyone wherever they go; those once upstanding citizens are consigned forever to the "electronic plantation."

*Arrest-Proof Yourself* is written in an arrogant style, demonstrating through the authors' experience the nature of police officers to arrest as many people as possible. The treatment of suspects is described as demeaning, revealing an unfair and biased arrest process that primarily targets the less fortunate and impoverished. Although published in 2007, this book provides information that remains timely today and is a sobering wake-up call. *Arrest-Proof Yourself* is available in PLN's bookstore on page 62 of this issue. 📖



**STRENGTH STACK 52**  
114 BODYWEIGHT EXERCISE CARDS INSIDE!

**JUST \$21.95!\***  
(shipping included)

**Experience the Game of Fit!**

Send money orders or institutional checks made payable to:  
Prisoner Assistant  
Po Box 704  
Lake Harmony PA 18624

**Features:**  
-Soft cover book with perforated-card stock for playing cards.  
-Many fitness games available.  
-Effective NEW bodyweight training system.  
-Exercise your entire body with no equipment.

Introducing **THE BUZZ REPORT!** Subscribe today, and get all of your sports scores and lines delivered conveniently to your email inbox, every day! Add **info@sportzzbuzz.com** to your Corrlinks email subscription list for info. on how to get The Buzz!

# WELCOME TO KRASNIA BABES & KRASNIA STUDS WORLD

TENS OF THOUSANDS OF THE HOTTEST AND MOST SCANDALOUS BABES&DUDES FOUND ON THE PLANET.  
EACH CATALOG PAGE HAS 120 BEAUTIFUL GIRLS OR BOYS POSING JUST FOR YOU!  
ORDER ONE CATALOG PAGE FOR ONLY \$4.50 OR FOR 10 U.S. FOREVER STAMPS WITH AN SASE ENCLOSED.  
WE WILL SEND YOU VOLUME ONE. EACH ADDITIONAL VOLUME THE SAME PRICE!

## HELP US TO HELP YOU!

WE ARE MORE THAN HAPPY TO ANSWER E-MAIL INQUIRES HOWEVER, DUE TO MAILING COST AT \$0.46 CENTS  
A LETTER, PLEASE ENCLOSE AN SASE WITH YOUR QUESTIONS, OTHERWISE NO REPLIES!

## WHAT ABOUT OUR PRICES AND POLICIES

COLOR PRINTS ON 4x6 GLOSSY PHOTO PAPER AS LOW AS \$0.35 CENTS PER PRINT ON ORDERS OVER 500  
SHIPPED ACCORDING TO POLICY: 25 PICTURES PER ENVELOPE EVERY 24 HOURS. S&H \$2.00 PER ENVELOPE.

## METHOD OF PAYMENT/CONTACT INFORMATION

U.S. POSTAL SERVICE MONEY ORDERS-STATE & FEDERAL CORRECTIONAL INSTITUTIONAL CHECKS

PAYABLE ONLY TO: KRASNIA L.L.C.

EQUATION FOR FIRST CLASS U.S. FOREVER STAMPS

BRAND NEW FLAT BOOK FOR ALL ORDERS AT THE RATE OF \$6.00 PER FLAT BOOK.

WE RESPOND TO OUR CLIENTS NEEDS AND TRY TO HELP THE BEST WE CAN.

OUR SEASONAL SPECIALS MEAN A KICKOFF OF SAVINGS!

### COLOR CATALOG DISCOUNT SALE ONE COLOR CATALOG OF 120 BABES IN CLASSIC OR NUDE LINES \$4.50

PLEASE INCLUDE

A SELF-ADDRESSED STAMPED  
(2-FIRST CLASS STAMPS) ENVELOPE.  
QUANTITY BUYS:

5-14 CATALOGS =10% OFF OUR REGULAR PRICE  
15 CATALOGS =15% OFF OUR REGULAR PRICE  
20 CATALOGS =20% OFF OUR REGULAR PRICE  
25 CATALOGS =25% OFF OUR REGULAR PRICE  
30 CATALOGS =30% OFF OUR REGULAR PRICE  
35 CATALOGS =35% OFF OUR REGULAR PRICE  
40 CATALOGS =40% OFF OUR REGULAR PRICE  
45 CATALOGS =45% OFF OUR REGULAR PRICE  
50 CATALOGS =50% OFF OUR REGULAR PRICE  
BE SURE TO SPECIFY CLASSIC OR NUDE BABES!

150 VOL. OF KRASNIA BABES CLASSIC LINE  
150 VOLUMES OF KRASNIA BABES NUDE LINE

### \$24.95 S&H FREE FOR GRAB BAG OF 50 PHOTOS

FROM ALL OUR CATALOGS  
SPECIFY RACE AND MAIN  
AREA OF YOUR INTERESTS  
WE WILL PICK SELECTION  
FOR YOU

BONUS 1 COLOR CATALOG  
PAGE OF 120 BABES

### LOOSE STAMPS FOR LOOSE BABES

KRASNIA LOOSE STAMP GRAB BAG SPECIAL  
10 LOOSE BABES.....30 STAMPS  
25 LOOSE BABES.....75 STAMPS  
50 LOOSE BABES.....150 STAMPS

ALL STAMPS MUST BE 1ST CLASS STAMPS  
IN LIKE NEW CONDITION!  
SPECIFY NUDE OR BOP-SAFE (NO VISIBLE NUDITY)  
WE WILL PICK SELECTION FOR YOU

### KRASNIA BABES HAS SPRUNG SALE! FREE SAMPLE CATALOG FROM KRASNIA!

120 BABES IN EACH CATALOG  
ENCLOSE ONE SASE WITH TWO FIRST  
CLASS STAMPS! 1 CAT PER CUSTOMER  
PLEASE SPECIFY MALE OR FEMALE BABES  
NUDE OR BOP-FRIENDLY

3 BRAND NEW FLAT BOOKS OF FOREVER  
STAMPS FOR GRAB BAG OF 45 PHOTOS  
FROM ALL OUR CATALOGS. SPECIFY RACE  
AND MAIN AREA OF YOUR INTERESTS  
WE WILL PICK SELECTION FOR YOU  
BONUS 1 COLOR CATALOG OF 120 BABES  
PLEASE INCLUDE 6 FOREVER STAMPS  
WITH YOUR ORDER FOR S&H

KRASNIA L.L.C.  
P.O. BOX 32082

BALTIMORE, MD 21282

EMAIL AND CORRLINKS REQUESTS ACCEPTED AT:  
KRASNABABES@HOTMAIL.COM

WE'D LIKE TO START THE HOLIDAYS RIGHT THIS YEAR!  
THE WAY TO DO THAT IS BY SENDING YOU INCREDIBLE VALUES  
IT'S ONE THING TO TALK THE TALK, ANOTHER TO WALK THE TALK

50 GREAT BABES 0.50 CENTS EACH!-\$25.00  
100 GREAT BABES 0.45 CENTS EACH!-\$45.00  
200 GREAT BABES 0.40 CENTS EACH!-\$80.00  
300 GREAT BABES 0.40 CENTS EACH!-\$120.00  
500 GREAT BABES 0.35 CENTS EACH!-\$175.00

STANDARD TERMS & CONDITIONS APPLY - \$2.00  
PER ENVELOPE (25 PHOTO) FOR SHIPPING AND HANDLING!

WAIT!

YOU SAY YOU DON'T HAVE ENOUGH BABE CHOICES  
OR CATALOGS? YOU NEED CATALOGS?  
PREPAY YOUR ORDER AND WE WILL SEND YOU  
FREE COLOR CATALOGS!  
GREAT DEAL, BUT HOW MANY CATALOGS?

FOR EVERY 100 BABES WE'LL SEND YOU  
240 BABES TO CHOOSE FROM!

## ORDER

50 BABES.....ONE SINGLE CATALOG  
100 BABES.....ONE DOUBLE CATALOG  
200 BABES.....TWO DOUBLE CATALOGS  
300 BABES.....THREE DOUBLE CATALOGS  
500 BABES.....FIVE DOUBLE CATALOGS

KRASNIA IS PROUD TO INTRODUCE AT FANTASTIC INTRODUCTORY PRICES  
THE CONNOISSEUR'S COUTURE "CACHE TWO-FIVE COLLECTION"  
OF INTERNATIONAL ADULT FILM STARS  
TWELVE PACKAGES OF 25 NUDE AND NON-NUDE POSES,  
AVAILABLE ONLY IN OUR "CACHE TWO-FIVE" COLLECTION.

### "CACHE TWO-FIVE"

"CACHE TWO-FIVE" IS AVAILABLE IN TWELVE (12) SPECIALLY PRICED PACKAGES  
OF 25 POSES IN NUDE AND NON-NUDE POSES.

PLEASE SPECIFY ON YOUR ORDERS IF YOU WANT NUDE OR NON-NUDE PACKAGES  
AND WHAT COLLECTION NUMBER YOU'D LIKE.

COLLECTIONS ARE NUMBERED 01-12 FOR EXAMPLE ON YOUR ORDER YOU'D WRITE:

\*\*\*NUDE CACHE TWO-FIVE PACKAGE 01 & 02\*\*\*

REMEMBER THERE ARE TWELVE (12) COMPLETELY DIFFERENT PACKAGES OF 25 BABES,  
THERE ARE NO DUPLICATES IN ANY OF THE 12 PACKAGES.

600 BEGUILING BEAUTIES, ALL BRAND NEW ADDITIONS TO OUR LINE AND AVAILABLE ONLY  
IN OUR "CACHE TWO-FIVE" PACKAGES! 300 NUDES AND 300 NON-NUDE BEAUTIES

CAPTURE YOUR OWN COLLECTION OF KRASNIA'S "CACHE TWO-FIVE" SELECTIONS IN  
INDIVIDUALIZED PACKAGING OF 25 RARE AND EXQUISITE BREATH-TAKING BEAUTIES.

THE CONNOISSEUR'S COUTURE COLLECTION OF "CACHE TWO-FIVE" BRINGS YOU  
25 BEAUTIES IN EACH "CACHE TWO-FIVE" PACKAGE FOR ONLY \$12.95 PER PACKAGE

LIMITED TIME SPECIAL \*\*\*\*\* \$59.95\*\*\*\*\*

PLUS S&H FOR 6 "CACHE TWO-FIVE" PACKAGES OF THE NUDE OR NON-NUDE COLLECTIONS  
150 BEAUTIES

IMAGINE 150 OF THESE EXCITING AND EXQUISITE BEAUTIES  
FOR A RIDICULOUSLY LOW PRICE OF

\*\*\*\*\*\$59.95\*\*\*\*\* PLUS \$12.00 SHIPPING AND HANDLING CHARGE.

ADD \$2.00 FOR SHIPPING AND HANDLING PER "CACHE TWO-FIVE" PACKAGE ORDERED.

YOU MUST SPECIFY NUDE OR NON-NUDE PACKAGES

IF NOT SPECIFIED NON-NUDE WILL BE SHIPPED AUTOMATICALLY

ALL OF OUR NORMAL POLICIES APPLY

### FOR KRASNIA CLIENTS WHO WORK THE YARDS; HAVE WE GOT A GREAT OPPORTUNITY FOR YOU...GRAB BAG MR. HUSTLE GRAB BAG BARGAIN DAYS

ONLY \$0.25 CENTS PER BABE

5 GRAB BAG MINIMUM PURCHASE REQUIRED  
\$2.00 SHIPPING AND HANDLING PER BAG

25 AWESOME BABES PER BAG AT ONLY \$6.25 PER BAG  
YOU MUST BUY AT LEAST 5 GRAB BAGS OR 50 GRAB BAGS.  
THIS\*\*\*GRAB BAG BARGAIN\*\*\* IS NOT GOING TO BE OFFERED  
AGAIN THIS YEAR. **SO STOCK UP NOW!**

AS YOU KNOW YOU GET AN ARRAY OF 25 GORGEOUS BABES  
YOU CAN ONLY CHOOSE EITHER MALES OR FEMALES,  
ALL NUDES OR BOP SAFE...THE INDIVIDUAL SELECTIONS COME  
FROM OUR BEST CATALOGS!!!

YOU MAY WANT TO SIT DOWN FOR THIS BONUS BARGAIN!  
OUR BABES CATALOGS SPECIAL OF THE DECADE

— 5 COLOR CATALOGS FOR \$6.00 —  
— 10 COLOR CATALOGS FOR \$12.00 —  
— 15 COLOR CATALOGS FOR \$18.00 —  
— 20 COLOR CATALOGS FOR \$24.00 —

OUR CATALOGS SPECIAL AVAILABLE WHEN YOU PURCHASE  
THE 5 GRAB BAG MINIMUM!

THIS PRICE INCLUDES FREE SHIPPING ON THE CATALOGS  
BECAUSE OF SHIPPING TERMS ALL CATALOGS SOLD IN  
MULTIPLES OF 5 FOR \$6.00 ONLY.

YOU CHOOSE EITHER MALE OR FEMALE CATALOGS  
AND IF YOU WANT NUDE OR BOP SAFE!!



# When Victims Speak Up in Court – in Defense of the Criminals

by Andrew Cohen

*A death penalty case in Colorado has generated an unusual fight between a district attorney and two parents who oppose capital punishment against the man who murdered their son.*

ONE OF THE MOST PROFOUND CHANGES in criminal justice over the past 40 years has been the rise of the victims' lobby. Essentially shut out of the core of the process until the 1970s, the victims' rights movement today can cite legislation from sea to sea, chapter and verse under both federal and state laws, that broadens the rights of victims to participate in the trials of those accused of harming them or their families. The Department of Justice's 2012 "Attorney General Guidelines for Victim and Witness Assistance," for example, totals 66 pages and barely scratches the surface of what similar state guidelines reveal.

The immutable trio that once existed in criminal cases – judge, prosecutor and defendant – now almost always resembles a quartet. Victims have a voice – and they use it. All 50 states now allow some form of "victim impact statement" at sentencing. Because such statements are often so compelling to jurors, defense attorneys frequently seek ways to blunt their impact. But these efforts almost always fail. Even judges who are sympathetic to the constitutional rights of defendants, who fret about the prejudicial impact of victim testimony, say they are bound by legislative declarations broadening the scope of victim participation in criminal cases.

But a pending Colorado case raises

a profound question that few judges (or prosecutors or jurors) ever have to confront: What happens when the victims of violent crime seek to speak out on behalf of the defendant and not the state? What happens when the family members of a murder victim seek leave to beg jurors at sentencing to spare the life of the man who killed their son? What responsibility does the prosecutor have in that case? What obligations do the courts have? Do victims' rights sound only when they favor the government and the harshest sentence, or do they sound as well when they cry out for mercy?

So far, the prosecutor in the case, Arapahoe County District Attorney George Brauchler, has answered those questions clearly: He wants to block one couple's efforts to speak out against the death penalty for the man who murdered their child. Brauchler has filed a motion in a pending case seeking to bar Bob and Lola Autabee from participating in the sentencing phase of the trial of Edward Montour, their son's killer. The law only guarantees the rights of victims to "discuss the harm that resulted from the crime," Brauchler argues. But I haven't been able to find a single victims' right advocate who believes that's true.

## People of the State of Colorado v. Montour

THERE DOESN'T SEEM TO BE MUCH DOUBT, reasonable or otherwise, that Edward Montour killed Colorado corrections officer Eric Autabee in a prison kitchen on October 18, 2002. (Montour was in that kitchen, and in that prison, because he was serving

without juries, could not impose death sentences.

Then, last year, a trial judge overturned Montour's conviction and allowed him to withdraw his initial guilty plea in the Autabee killing. Montour was not adequately defended by a lawyer at the time of that plea, the judge ruled, and had a documented history of mental illness. A new trial was ordered. Montour, through his attorney, said he would re-plead guilty to Autabee's murder if he could be spared the death penalty and receive a(nother) sentence of life in prison without the possibility of parole. The prosecutor, Brauchler, rejected the offer and went ahead instead with the now-pending capital case against Montour.

The last time Montour faced trial for Autabee's death, the victim's family supported the death penalty as an option. Not this time. This time, having educated themselves about capital punishment, and better understanding the nature of Montour's mental illness at the time of Eric's death, the Autobees have been vocally, stridently, ceaselessly against the imposition of death in this case. In January 2014, for example, as potential jurors in the Montour case were lined up outside the courthouse waiting to learn about the case for which they were summoned, the Autobees picketed the line and pleaded with Brauchler to spare their son's killer.

Episodes like this – and the media attention they inevitably generated – prompted Brauchler, the prosecutor in the Montour case, to remove the family from his preliminary list of witnesses to be called during the sentencing of the case. And that removal, in turn, has prompted Montour's attorneys to ask the trial judge in the case to allow the Autobees to testify during sentencing. That prompted an aggressive response from Brauchler, arguing that Colorado's victims' rights laws don't apply to "mitigating" factors during sentencing but only to "aggravating factors." And that is where we stand today.

## The Autobees

THE PARENTS OF THE VICTIM HAVE SPOKEN, and eloquently so, about the reasons why they have chosen to oppose the death penalty in this case. Below, from a court filing, is the essence of their claim:



### FULTON & WELCH

TEXAS PAROLE  
ATTORNEYS

- o AFFORDABLE
- o PERSONALIZED PACKET
- o 2 HEARINGS
- o MEET WITH YOU & FAMILY

"LET US GET YOU HOME SOONER"

10701 Corporate Dr., Ste. 390,  
Stafford, Texas 77477

a life sentence for killing his infant daughter). Less than one year after Autabee's death, Montour pleaded guilty to first-degree murder and was quickly sentenced to death by a Colorado judge. But that death sentence was overturned, in 2007, after the U.S. Supreme Court ruled in *Ring v. Arizona* that judges alone,

"Bob would like any jury considering the appropriate penalty for Eric's killer to know who Eric truly was and how his loss has impacted the Autobees. The Autobees loved Eric deeply, and now remember him for his peace-loving nature, his love of the outdoors, and his innate desire to find moments of calm when hunting or fishing. Eric was a gentle soul who would hold Bob's hands even when he was in his 20's. Eric started his career in the culinary arts and then, like Bob, became a prison corrections officer.

"Despite the inhumanity he saw around him, Eric would not speak disdainfully of prisoners, but, instead, recognized their human dignity. Eric accomplished much in his short time on earth – he saved three lives before he died – but missed out on even more. It pains the Autobees to consider the many milestones in Eric's life that might have occurred were he still alive, including marriage, children, and career advancement.

"The crime affected the Autobees not just because of their beloved son's loss, but also because of who they became after this loss. After Eric's death, their warm feelings

of love that Eric always nurtured quickly turned into cold feelings of vengeance and violence. Originally, the Autobees fervently supported the prosecution's efforts to seek absolute retribution. Over time, however, and with reflection, they realized that Eric would not have wanted this for himself or for them; Eric would not have wanted someone killed in his name, nor would he have wanted his family to live in the darkness of hatred. The Autobees know this because they know how Eric lived: by loving life, saving lives, and extending mercy to the merciless.

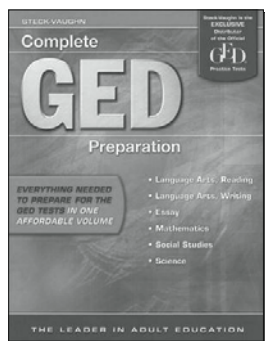
"The effect of the crime on the Autobees cannot be separated from this ongoing death penalty prosecution. Bob and his family have found healing in the forgiveness that they have extended to their son's killer. However, the prosecution strives to forever undo this healing by seeking to avenge one killing with another, over the family's pleas for mercy. For the Autobee family, a death sentence and the accompanying years of litigation, all supposedly done in their son's name, would rob them of peace. For, in the eyes of society, their son's name forever would be associated with cruelty and violence, rather than the human dignity and

mercy he embodied in life."

## Call and Response

BRAUCHLER SURELY HAS NO MORAL ANSWER for this, and the legal answer he has ginned up barely passes the straight-face test, but that has not stopped him from seeking to silence the Autobees' voice during the upcoming trial. "To permit testimony concerning the victims' general view of the death penalty or whether this particular defendant should be executed or given a life sentence invades the province of the jury and should not be permitted," prosecutors told the judge. Can you imagine them making that argument if the Autobees were still advocating for Montour's death?

Colorado law "only guarantees the right of the victims to discuss the harm that resulted from the crime," Brauchler argues, and this limits "evidence from the victims to the characteristics of the victim and the impact of the crime on the victim's family." It is "not the court process that can be attacked by the victims," prosecutors assert, before claiming that Montour's Eighth Amendment rights will be implicated if the Autobees speak out in his favor. You don't



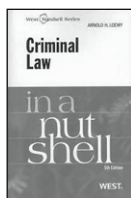
### Complete GED Preparation [Paperback]

Publisher: Steck-Vaughn; 2nd edition  
928 pages; \$24.99; Item #: 1099

Over 2,000 GED-style questions thoroughly prepare learners for test day. This single book offers thorough coverage of the revised GED Test with new test information, instruction, practice, and practice tests. Answer key included.

Order from: **Prison Legal News**  
(Add \$6 shipping for orders under \$50)  
**PO Box 1151**  
**Lake Worth, FL 33460**  
**Phone: (561) 360-2523**  
**www.prisonlegalnews.org**

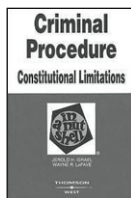
## New Titles Available in PLN's Bookstore



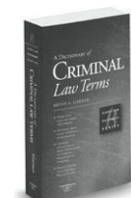
**Criminal Law in a Nutshell**, by Arnold H. Loewy,  
5th edition, 387 pages. **\$43.95**



**Advanced Criminal Procedure in a Nutshell**, by Mark E. Cammack and Norman M. Garland,  
2nd edition, 505 pages. **\$43.95**



**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFare,  
7th edition, 603 pages. **\$43.95**



**A Dictionary of Criminal Law Terms (Black's Law Dictionary® Series)**, by Bryan A. Garner, 768 pages.  
**\$33.95**

☐ Criminal Law in a Nutshell ☐ Advanced Criminal Procedures in a Nutshell ☐ Criminal Procedure  
☐ Dictionary of Criminal Law Terms

Amount enclosed (add \$6 S&H for orders under \$50; free shipping over \$50) \_\_\_\_\_

By ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**PRISON LEGAL NEWS**

PO Box 1151 • Lake Worth, FL 33460  
Tel [561] 360-2523 • www.prisonlegalnews.org

## Victims Defend Criminals (cont.)

need to be a lawyer, or a juror, to understand that this is a terrible argument. And Brauchler cites no controlling Colorado law in support of it.

In their response, the Autobees' attorneys seem incredulous as they recite the provisions of Colorado law that support their view. "A crime victim," they told the court, has the "right to appear, personally or with counsel, at the sentencing proceeding and to adequately and reasonably express his or her views regarding *'the type of sentence which should be imposed by the court.'*" Under Colorado law, the Autobees added, "prosecutors are required to support – not oppose – this right by 'inform[ing] each victim of 'his or her 'right' to *'express an opinion at the sentencing hearing or any sentence proposed to the court for consideration'*" (emphasis in original).

And then the Autobees shared with the trial judge what they really think is happening here. "Because the Autobee family's beliefs conflict with the prosecutions' agenda," the family's lawyers wrote, "the prosecution has relegated [them] to the status of second-class victims." Brauchler has it all wrong, the family asserts. Prosecutors should be heeding the wishes of the family members instead of putting their own priorities first. What the family really is saying, however, is that the world of victims' rights is far different than it was 40 years ago and that prosecutors can't always have things their own way.

### The Lobby

ALTHOUGH THIS CONFLICT NOW IS unfolding in Colorado, it has national implications. The Autobees are not the first

family to seek mercy for someone who took the life of a loved one. And Brauchler isn't the first prosecutor to seek to block such a family from getting through to a jury. In fact, this sort of dispute happens more often than you might think. So I called around to a few national victims' rights organizations with a simple question: Does your organization support the families of victims who oppose the imposition of the death penalty in a particular case? Here are some of the responses I received.

From Kristy Dyroff, of the National Organization for Victim Assistance (NOVA):

"We support crime victims in seeking justice in the way they are comfortable. There are victims who seek capital punishment and those who strongly oppose it. Restorative Justice is the term used for this type of model. It focuses on addressing the needs of the victim, the offender and the community, not the justice system.

"It is definitely NOT for all victims/survivors but there is a significant contingent within the crime victim assistance network who support this model. At NOVA, our focus is always on assisting the crime victims and their families. We are very careful not to tell them what they need, or how to heal. We try to educate and support them in their choices.

"We support the crime victim in pursuing the justice they seek, regardless of the interests of the prosecutor, law enforcement or others. Yes, we have supported victims in the past who object to capital punishment. We also encourage all other participants in the process to support and respect the victims in their position."

And from Kate Lowenstein, the program director of the group Murder Victims' Families for Human Rights, whose own father was murdered:

"More people likely understand that you can't automatically assume that losing a loved one to murder will mean that you support the death penalty, nor does opposition to the death penalty mean you don't want the killer or killers brought to justice, and it does not necessarily mean you have forgiven the murderer. Murder and the justice system are complicated, as are the views and experiences of the victims and families who are affected by it. We must not try to simplify this, but allow victims their unique and complicated responses to the trauma and horror of having a family member murdered and the criminal justice process that occurs after that.

"Despite the wider cultural awareness of victim opposition to the death penalty, unequal treatment of victim family members by prosecutors in capital trials is still a problem, one that exists largely below the public radar, in District Attorneys' offices across the country, where often victims' family members don't know their rights and there is no one around to step forward and advocate on their behalf.

"It occurs, for example, that if two surviving family members want to give a victim impact statement during the sentencing phase of the trial, the prosecutor will allow the pro-death penalty survivor to speak but not the survivor who opposes the death penalty, regardless of the fact that no mention of the victims' views of what the sentence should be is allowed in Victim Impact Statements.

"The point is not that victims should get to determine sentencing. The point is that victims' rights should be granted to all victims, regardless of their position on the death penalty, or perceived 'cooperation' with the District Attorneys office. Disagreeing with the prosecutor – opposing the death penalty when the prosecutor is seeking a death sentence – should not mean that you are silenced, treated as 'part of the defense team' and not a 'real' victim, or denied the right to speak about the impact of the murder on you and your family."

It's not the Autobees who are the outliers here. It's the prosecutor. He can hardly purport to serve as the "conscience of the community," or claim he is following clear Colorado law by ignoring the wishes of the one family in the state that has earned the right to speak at the Montour trial. Victims' rights mean rights *for all victims* and not just those who toe the government's line. The jury in Edward Montour's case deserves to hear what the Autobees have to say, the family has a right to say it in court, and no lawman has the right to come between that vital communication.

A ruling from the trial judge is expected any day. ■

*Andrew Cohen is a contributing editor at The Atlantic, 60 Minutes' first-ever legal analyst and a fellow at the Brennan Center for Justice. He is also chief analyst for CBS Radio News and has won a Murrow Award as one of the nation's leading legal journalists. This article was originally published in The Atlantic (www.theatlantic.com) on January 28, 2014; it is reprinted with permission.*

**SMITH'S GUIDE to HABEAS CORPUS RELIEF**  
for State Prisoners under 28 U.S.C. §2254  
Example pleadings from the initial habeas corpus petition to the final petition for a writ of certiorari. Let Smith guide you step-by-step through the federal courts with confidence. 380 pages.

\$24.95 + \$6.95 shipping & handling. In CA add \$2.18 sales tax. Sent via USPS media mail. Money orders, personal or institutional checks ONLY. Send \$31.90 (In CA, \$34.08) payable to Roberts Company. Send name, address, prisoner #, and payment to: **Roberts Company, 15412 Electronic Lane #101, Huntington Beach, CA 92649**. Also available on Amazon.com.

# States Renewing Their Prison Phone Contracts

*As state DOCs renew or rebid their prison phone contracts, you can help urge them to eliminate commission kickbacks and lower intrastate phone rates.*

*The Campaign for Prison Phone Justice needs your help in*

**\*\*\*\*\* Minnesota, Kentucky and Alaska! \*\*\*\*\***

The Departments of Corrections in the above states are in the process of re-bidding or renewing their prison phone contracts. Most DOCs receive a commission (kickback) on revenue generated from calls made by prisoners, which results in excessively high phone rates. Although the FCC voted last year to cap the costs of interstate (long distance) prison calls, which went into effect on February 11, 2014, the order does not apply to intrastate (in-state) calls; an estimated 85% of prison phone calls are in-state. This is an opportunity to ask DOCs to forgo commissions and ensure their new prison phone contracts are based on the lowest cost to those who pay for the calls – mostly prisoners' families.

## **Take Action NOW! Here's What YOU Can Do!**

Ask your family members and friends to write, email, call and fax the DOC and the governor's office (addresses and contacts are listed below), requesting that the DOC: 1) forgo commission payments when re-bidding or renewing its prison phone contract, and 2) base the new contract on the lowest calling cost. Lower prison phone rates should apply not just to long distance calls but also to in-state calls. For a sample letter or to easily send an email, visit the Campaign for Prison Phone Justice's website and click on the "Take Action" tab:

**[www.phonejustice.org](http://www.phonejustice.org)**

### **Prison phone contract information & Contacts:**

**Minnesota:** Receives a 59% kickback; existing contract expires on 3-31-2014. The DOC charges \$6.45 for a 15-minute collect intrastate call and \$1.75 for a collect local call. **Contacts:** Minnesota DOC, Commissioner Tom Roy, 1450 Energy Park Drive, Suite 200, St. Paul, MN 55108; ph: 651-361-7226 or 651-361-7200, fax: 651-642-0414, email: tom.roy@state.mn.us. Governor Mark Dayton, 130 State Capitol, 75 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155; ph: 651-201-3400, fax: 651-797-1850, email: gmark@gov.state.mn.us or kathy.kostohryz@state.mn.us

**Kentucky:** Receives a 54% kickback; existing contract expires on 5-31-2014. The DOC charges \$4.50 for a 15-minute collect intrastate call and \$1.85 for a collect local call. **Contacts:** Kentucky DOC, Commissioner LaDonna Thompson, 275 East Main Street, Frankfort, KY 40602; ph: 502-564-4726, fax: 502-564-5037, email: ladonna.thompson@ky.gov. Governor Steve Beshear, 700 State Capitol, Frankfort, KY 40601; ph: 502-564-2611, fax: 502-564-2517, email: governor@ky.gov

**Alaska:** Receives a 7 to 32.1% kickback; existing contract expires on 6-30-2014. The DOC charges \$2.63 to \$7.61 for a 15-minute collect intrastate call (local calls are free). **Contacts:** Alaska DOC, Commissioner Joseph Schmidt, 550 W. 7<sup>th</sup> Ave., Suite 860, Anchorage, AK 99501; ph: 907-465-4652, fax: 907-465-3390, email: joseph.schmidt@alaska.gov. Governor Sean Parnell, State Capitol, P.O. Box 110001, Juneau, AK 99811; ph: 907-465-3500, fax: 907-465-3532, email: governor@alaska.gov



# Texas Criminal Court Fees are a Tax on Poor Defendants

by Matt Clarke

**T**HE TEXAS LEGISLATURE HAS ERECTED such a hodgepodge of criminal court fees that even the court administrators and clerks don't know how to apply them. These fees, which are frequently not used for their intended purposes, amount to a hidden tax on the poorest members of society ensnared in Texas' criminal justice system.

"Sometimes, I can't even tell my client what the bill is for," said Austin defense attorney David Gonzales.

He is not alone. The Texas Office of Court Administration (TOCA) receives "hundreds of calls from court officials about how to assess and prioritize fines, fees and surcharges in criminal cases," according to a report the agency published in 2009. "The sprawling number of state and local fees and court costs that state law prescribes as a result of a criminal conviction amounts to a nearly incomprehensible package."

The fee system is so complex that people convicted of identical crimes might be charged vastly different fees, possibly violating the constitutional guarantee of equal treatment under the law.

Nor is it always possible to determine how a particular fee is actually used; typical legislative practice includes the raiding of fee accounts to balance the budget or fund pet projects. Some fees, such as the

\$50 clerk's fee and \$25 prosecutor's fee, go straight into a county's general fund where they can be used to pay for any budget item, court-related or not.

Every person convicted of a crime in Texas pays a "Consolidated Court Cost" fee of \$40 for a Class C misdemeanor, \$83 for Class A and B misdemeanors, and \$133 for a felony. All criminal defendants are also charged at least six additional fees with titles such as "records management and preservation fee," "clerk's fee," "county and district court technology fund fee" and "courthouse security fee."

Those arrested with a warrant are charged a \$50 fee; those without a warrant pay \$5. Entering or leaving jail incurs a \$5 fee, and DUI defendants are charged a "visual recording fee." A \$30 "state traffic fine" is imposed on all traffic violations.

"We have a 'school crossing fee' that nobody—nobody—can tell me what comes of it," observed state Senator John Whitmire, who chairs the Senate Jurisprudence Committee.

The total bill can easily exceed \$600. The cost for those placed on probation is much higher: \$4,000 to \$5,000, according to a 2009 TOCA survey.

Some of the fees go to the state's Compensation to Victims of Crime (CVC) Fund, administered by the Office of the Attorney General. The CVC receives revenue from Consolidated Court Cost fees, restitution installment fees and parole

administration fees, among other sources. From 2004 to 2012, the CVC received approximately \$100 million per year, mostly from Consolidated Court Cost funds.

Criminal court fees aren't necessarily fair. Defendants convicted of sex crimes pay a \$250 "DNA testing fee" plus an additional "DNA collection fee" regardless of whether DNA was collected or tested in their cases. Some of the fees for DNA testing actually end up in a state highway fund.

"Breath alcohol testing fees" in DUI cases don't necessarily go to pay for breath alcohol testing any more than DNA fees necessarily pay for DNA testing. Texas judicial administrators estimate that of every three dollars collected in fees, one will be spent for something unrelated to the court system.

For example, court fees have paid for rehabilitative services for people with brain injuries and an obesity study of minority children in the Houston area. They also fund the salaries of state game wardens. Two million dollars in court fees went to pay a private company to install Internet cameras along the Mexican border so people could view them online and report illegal border crossings.

Court-imposed fees are also raided to balance the budget. In 2011, Texas legislators took \$20 million in fees to pay for state employee pensions, and moved \$135 million from the Fugitive Apprehension Fee account, intended to help apprehend parolees who abscond, to the state's general fund where it can be used for any purpose.

Another questionable method of using fees to balance the budget on paper is to let them remain uncollected, so they appear as a large amount of "accounts receivable." That may be why almost \$5 billion in uncollected

## WINNING HABEAS CORPUS & POST CONVICTION RELIEF Revised 4th Ed. 2012

Main subject: Ineffective Assistance of Counsel-"IAC"

Atty Kent Russel writes: "Simply the best source for a quick study on major subjects in the criminal process."

- <> A virtual law library in a book, major constitutional issues
  - <> 6th Amendment & IAC, Duty to investigate
  - <> Forensics, Plea IAC, Jury Instructions
    - <> Major const. claims
- <> §2254 & 2254 Procedure, Clearly established law

## POST COVICTION RELIEF FOR WASH. STATE - Personal Restraint Petition

The only book for Wash. State prisoners who seek collateral review by PRP or CrR 7.8 motion. Covers all aspects of preparing a PRP, time bar, facial invalidity, Plea bargain, sentencing, incl. case law & rules.

ORDER: (price incl. tax, plus S&H)

- |                                      |          |
|--------------------------------------|----------|
| [ ] Winning Habeas Corpus...         | \$ 59.50 |
| [ ] Post Conviction Relief for Wash. | \$ 45.50 |
| [ ] Both Books                       | \$ 95.00 |

To: FAST LAW PUBLISHING

Box 577, Upland CA 91785 On-line [www.fastlaw.org](http://www.fastlaw.org)

## Roget's Thesaurus

Can't think of the right word?  
Let Roget's help you! Over 11,000  
words listed alphabetically.  
See page 61 for more information.

# inmateMAGS formerly MyMagstore.com

Buy 1200 **SINGLE** Copies of Magazines • 1200 **Subscriptions** • **VIP Service**  
**1800 Newspapers** • Payment with **Stamps** • **Prepaid Accounts**  
Send \$3 or 10 Stamps for **50+ Page Full Catalog** (\$3 Discount Coupon Included)

[inmateMAGS.com](http://inmateMAGS.com)  
4208 University Way NE  
Seattle, WA 98105

[www.inmateMAGS.com](http://www.inmateMAGS.com)  
[info@inmateMAGS.com](mailto:info@inmateMAGS.com)  
206-322-6397



fees is included in designated accounts that can be used to appear to “balance” budgets over and over again.

“The budget is far too much based on diversion and deception,” according to state Senator Kirk Watson. “When people are told their money is going to be spent for something specific, a promise is made: If we collect this tax from you, we will spend it for this practice.”

“If we’re not going to use a fee for a particular purpose, we shouldn’t collect it,” added Jim Allison of the County Judges & Commissioners Association of Texas.

In fact, collecting fees that are not used for their intended purpose and are in effect general taxes may be unconstitutional. Further, the fees impose an onerous and often unjustified burden on people who are already among society’s poorest – criminal defendants.

“We’re trying to squeeze more money from people who have a hard time getting jobs because they have a criminal record, or have mental illness problems or substance abuse problems,” stated Ana Yáñez-Correa, executive director of the Texas Criminal Justice Policy Coalition. “These fees are a

tax on the poor,” she concluded.

Poor defendants who can’t pay the fees up front face the additional burden of fees on fees. There is a \$25 fee to set up a schedule by which to pay fees. It costs another \$12 for a “restitution installment fee” to pay off court-ordered restitution over time, and a \$2 “transaction fee” each time a payment is made.

Although lawmakers are aware of the absurdity of the criminal court fee system, they don’t want to butcher their cash cow. The Consolidated Court Cost fees alone bring in almost \$200 million annually. In 2009 and 2011, the Texas Judicial Council – the policy-making body for the state’s courts – unsuccessfully urged the legislature to simplify the costs and fees.

There is, however, one positive precedent from a different type of fee. When the legislature attempted in 2011 to empty the System Benefit Fund account, which is funded by fees on telephone bills and intended to help the elderly and poor pay their utility costs during the summer, state Rep. Sylvester Turner raised the issue publicly, causing lawmakers to back down. Unfortunately, people who have been convicted of crimes

elicit much less sympathy, so the myriad of criminal court fees and their misuses will most likely continue unabated.

“Lawmakers are like anybody else – they do what they can,” noted former Texas chief deputy comptroller Billy Hamilton. “And nobody’s ever going to question it if they raise fees on criminals.”

Sources: *Austin American-Statesman*; “*Compensation to Victims of Crime Fund*,” *Legislative Budget Board Staff (Issue Brief, February 2013)*

## TEXAS ONLY

Post-conviction State and  
Federal Habeas Corpus

Parole Representation

Family Law

### Ashley Burleson

Attorney and Counselor at Law  
1001 Texas Avenue, Suite 1400  
Houston, Texas 77002

## NEW FRIENDS, HIGHER EDUCATION, AND EMPLOYMENT & HOUSING UPON RELEASE THROUGH WRITEAPRISONER.COM PROFILES

**Contact WriteAPrisoner.com &  
Start Looking Forward  
To Mail Call!**

**AS SEEN ON**  
CNN, 20/20, Fox News,  
Dr. Phil, O Magazine,  
E! True Hollywood,  
and hundreds more!

**WriteAPrisoner.com...**

Simply the largest, highest ranked, &  
most visited website of its kind!

- Pen-pal Profiles are affordably priced at \$40 for the first year, \$30 for renewing year
- Features a comprehensive search that allows viewers to find your profile by age, race, location, keywords, & more - 32 search options in all
- Your new friends can email their first message to you along with a photo
- Advertises non-stop on every major search engine with thousands of websites linking back to us
- Offers free Reintegration Profiles for inmates seeking employment and housing upon release and education during incarceration
- Translated into 51 languages & geared for international search engines
- Viewers can “subscribe” to your profile to be notified when your profile is updated, blog is added, artwork is posted, poetry is added, your release is near & much more
- Pen-pals have the option of helping you with a broad range of topics using WriteAPrisoner.com’s free Self-Help Series



**Get Started Today!**

Friends & family can submit your  
entire 250 word profile, photo, and  
payment for you online by visiting

**www.writeaprisoner.com/post**

Or for a FREE Brochure, Send a  
S.A.S.E. to:

WriteAPrisoner.com  
PO Box 10- PLN  
Edgewater, FL 32132 USA

mSP | LAW



**Michael Soukup**  
Licensed in Wisconsin and Illinois

**Matthew Pinix**  
Licensed in Wisconsin

## Appealing a Conviction? Hire an Appellate Attorney.

You wouldn’t hire a **heart surgeon** to perform **brain surgery**. Don’t hire a **trial attorney** to handle **your appeal**. Hire someone who focuses on **criminal appeals**.

Hire the **Law Office of Matthew S. Pinix**, attorneys with more than 10-years’ combined experience handling **criminal appeals** in **Wisconsin and Illinois**.

**Law Office of Matthew S. Pinix, LLC**  
1200 East Capitol Drive, Suite 220  
Milwaukee, Wisconsin 53211  
(414) 963-6164  
www.pinixlawoffice.com

- » Rated by Super Lawyers®
- » Rated by avvo.com
- » Better Business Bureau accredited

# Oregon Jail Guard Quits, Divorces Wife for Former Prisoner

**"I** CRUSHED A DUDE'S EYE SOCKET FROM repeatedly punching him in it, then I charged him with menacing and harassment," bragged Multnomah County, Oregon jail guard David B. Thompson in one of more than 1,700 messages he posted on an Internet gaming site over an eight-month period while at work in 2007.

"Seeing someone get Tasered is second only to pulling the trigger," Thompson wrote in another post. "That is money – puts a smile on your face."

As previously reported in *PLN*, Thompson, who had been employed as a veteran guard at the Multnomah County Detention Center (MCDC), was merely suspended without pay for 11 days rather than terminated or prosecuted for misuse of jail computers or using excessive force against prisoners. [See: *PLN*, March 2009, p.25].

The suspension did little to get Thompson's attention, apparently. He faced complaints for injuring a male prisoner in March 2009, for an undocumented use of force on a female prisoner in September 2010 and for an inappropriate conversation with another female prisoner in November 2011.

While assaulting prisoners is seemingly okay, falling in love with them evidently crosses the line in the eyes of Thompson's MCDC co-workers. When he confided in two other guards that he intended to divorce his wife to pursue a relationship with an exotic dancer shortly after her release from jail, they ratted him out.

Thompson also sent an email to a captain, confirming that he was in a relationship with a former prisoner but claiming he did not know if she was still on parole – a fact that his wife's divorce attorney later exposed. A formal investigation began in February 2012, according to Chief Deputy Mike Shults.

The former prisoner at the center of the scandal, Melissa M. Crawn, 31, was in custody at the Inverness Jail from August to December 2011 for violating her parole on a 2008 identity theft conviction. It was her fifth jail stay that year for parole violations and an intoxicated driving conviction.

On March 20, 2012, investigators confirmed that Crawn and Thompson were living together. The following day, Thompson was placed on administrative leave when investigators pulled him over

and found Crawn in his vehicle.

In separate interviews, Thompson and Crawn both admitted that they began a personal relationship while she was incarcerated. Crawn told investigators that she thought Thompson was attractive, a good listener and treated her better than other jailers. He even helped her file a harassment complaint against another male guard.

Just a week after her December 2011 release from jail, Crawn called Thompson at work. They continued their relationship by phone until Thompson visited her in January 2012. Thompson later left his wife and child for Crawn, who was still legally married but separated from the father of her children.

"I wonder if it's because he was in this relationship with her for so long and it was boring and I'm a little bit crazier," Crawn surmised in response to investigators' questions about why Thompson had left his wife and child for her. After all, she is "that foul-mouthed, tatted up country girl your momma warned you about," according to her Facebook page.

Crawn told investigators that her mother was a prison guard at the Eastern Oregon Correctional Institution when she met and eventually married Crawn's father, who was a prisoner at the facility.

The MCDC internal investigation found no evidence that Thompson and Crawn were intimate while she was in custody, said Multnomah County Sheriff's Lt. Mark Matsushima. Their relationship did, however, violate agency policy because it became physical after her release, according to Chief Deputy Shults.

Thompson finally resigned. "We had

## WHEN IT IS YOUR FAMILY'S FUTURE, EXPERIENCE MATTERS STATE AND FEDERAL POST-CONVICTION AND APPEALS

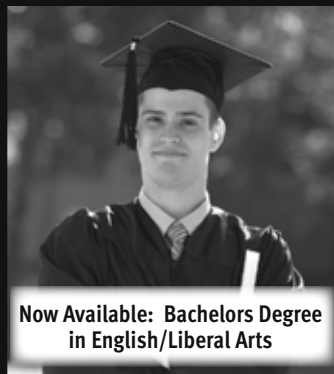
Licensed since 1995, hundreds of appellate briefs and habeas petitions,  
capital qualified for habeas and appeals in Texas and U.S. Southern District of Texas,  
Motions for New Trial, Rule 35 and 60b motions, re-sentencing and arrest of judgment.

Call or write the Law Offices of Patrick F. McCann, 713-223-3805.

909 Texas Ave, Ste 205, Houston, Texas 77002 • writlawyer@justice.com

**Serious financial inquiries only.**

## Earn an Adams State University Degree via Correspondence Courses



- Correspondence Courses via mail • No internet access required
- Degree options available — Associate of Arts or Science, Bachelors degrees in English, Business Administration, Government, History, Interdisciplinary Studies, Sociology, Paralegal Certificate Program, Masters Degree in Business Administration
- Affordable tuition — \$165/semester hour for undergraduate correspondence courses, \$350/semester hour for Masters level correspondence courses  
Payment options include cashiers check, credit card, money order or verified personal check
- Accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools
- 16+ years of experience serving incarcerated students
- Veteran friendly
- FREE unofficial evaluation of previously earned credits



Call or write to receive additional  
information — 800-548-6679  
Adams State University  
Office of Extended Studies, Suite 3000  
208 Edgemont Blvd. Alamosa, CO 81101  
www.adams.edu

to make sure we had all the facts before we took any definitive action,” said Shults. “But there’s no mistaking it, this is a case of extremely bad judgment that happened here.”

The Multnomah County District Attorney’s Office was investigating possible computer crimes related to Thompson’s use of the state’s Law Enforcement Data System to access information about Crawn for personal reasons after her release from jail.

Meanwhile, Crawn was sentenced to serve 15 days in the Clackamas County Jail for driving while intoxicated and with a suspended license, after she plowed into a fire hydrant in July 2011, just days after a stint in jail on a DUI conviction.

Thompson attended Crawn’s sentencing hearing and the two held hands and kissed in court. Apparently the now-former guard and former prisoner were meant for each other. 🐾

Sources: *The Oregonian*, [www.kptv.com](http://www.kptv.com), *Portland Tribune*

## South Dakota Parole Board Improperly Enhanced Prisoner’s Parole Date

**T**HE SOUTH DAKOTA SUPREME COURT has held that the state Board of Pardons and Paroles (Board) exceeded its authority when it calculated a prisoner’s initial parole release date by treating Class 4 felonies as Class 2 felonies.

Lloyd Rowley was convicted of two Class 4 felonies on October 12, 2007. His sentence was enhanced two levels – to the equivalent of Class 2 felonies – because he was a habitual offender, and he received 21 years in prison for both convictions.

Pursuant to SDCL 24-15A-32, defendants convicted of Class 4 felonies must serve 40 percent of their sentences before parole eligibility while those convicted of Class 2 felonies have to serve 50 percent of their sentences.

Since his sentence had been enhanced, the Department of Corrections (DOC) calculated Rowley’s initial parole date using the Class 2 percentage rather than the Class 4 percentage. The Board subsequently affirmed the DOC’s initial parole

date calculation; Rowley filed an appeal in circuit court, which upheld the Board’s decision.

The South Dakota Supreme Court reversed, finding that the plain language of the habitual offender statute, SDCL 22-7-8.1, “indicates that the sentence is enhanced, not the principal felony.”

The Court concluded: “By its plain language, SDCL 22-7-8.1 does not substantively change the principal felony nor does the reference to SDCL 24-15A-32 in the last sentence of SDCL 22-7-8.1 demonstrate legislative intent to enhance the felony class when determining an inmate’s parole eligibility date pursuant to SDCL 24-15A-32.” Therefore, “the Board acted without authority in determining that Rowley was a Class 2 felon when calculating his initial parole date.”

Justice Glen Severson issued a dissenting opinion. See: *Rowley v. South Dakota Board of Pardons & Paroles*, 2013 SD 6, 826 N.W.2d 360 (S.D. 2013). 🐾



## Gold Star Fragrances

4 West 37th St  
New York, New York 10018  
Tel. 212.279.4474; Tel. 212.279.4470  
Fax. 212.279.4471  
email: [gstarfragrances@gmail.com](mailto:gstarfragrances@gmail.com)  
website: [goldstarfragrances.com](http://goldstarfragrances.com)

We are the original distributor and importer of the finest perfume oils.

We carry over 1000 of the original and best perfume oils, soaps, incenses, body lotions, shower gels, body massage, bottles and more.

All of our oils are shipped in plastic bottles.

Catering to correctional facilities since 1976.

# California Female Prisoners Sterilized

**M**ORE THAN 130 FEMALE PRISONERS at two California facilities were sterilized over a four-year period without required state approval, and some of the women have claimed they were pressured, harassed and even tricked into signing forms agreeing to the sterilizations. The procedure, known as tubal ligation, involves severing a woman's fallopian tubes to prevent eggs from reaching the uterus; the operation requires general anesthesia and is considered permanent.

The surgeries were performed from 2006 to 2010 at outside medical facilities by doctors under contract with the California Department of Corrections and Rehabilitation (CDCR). Joyce Hayhoe, a spokeswoman for California Correctional Health Care Services – the federal court-appointed receiver over CDCR medical care – said the procedures violated state regulations that restrict tubal ligations not deemed medically necessary. They did not, however, violate state law.

According to public records, doctors were paid \$147,460 to perform the sterilizations on female prisoners from the California Institution for Women and Valley State Prison in Chowchilla. The Center for Investigative Reporting (CIR), which first reported the story on July 7, 2013, initially identified 148 prisoners who were sterilized from 2006 to 2010, but that number was later revised downward to 132 after a further review indicated some of the women had been counted twice. “Perhaps 100 more” prisoners were reportedly sterilized between 1997 and 2006.

Although they signed consent forms, several of the women complained they were pressured into agreeing to the procedures by medical staff and doctors, especially the OB-GYN at Valley State Prison, Dr. James Heinrich.

“As soon as he found out that I had five kids, he suggested that I look into getting it done,” said Christina Cordero, 34, who was incarcerated at Valley State. “The closer I got to my due date, the more he talked about it. He made me feel like a bad mother if I didn’t do it,” she stated. “Today, I wish I would have never had it done.”

Former prisoner Kimberly Jeffrey, who gave birth to a son while at Valley State, said she “went into a straight panic” when confronted with sterilization while

she was sedated and on an operating table for a caesarean section. She said her doctor tried to use the operation to perform a tubal ligation even though she had twice refused the procedure during earlier visits.

“As I was laying on the operating table, moments before I went into surgery, [the doctor] had made a statement that, ‘Okay, we’re going to do this tubal ligation, right?’ And I’m like, ‘tubal ligation? What are you talking about? I don’t want any procedure. I just want to have my baby.’”

“Our physicians were not following the proper procedures,” Hayhoe admitted. “The first priority we had was to stop it from taking place, which we did in 2010.” Heinrich and other doctors involved in the sterilizations “are no longer employed” by the CDCR, she added.

Extensive media coverage prompted state lawmakers to order investigations by the Medical Board of California and California State Auditor.

In a letter addressed to the federal receiver, the 31-member California Legislative Women’s Caucus wrote: “Pressuring a vulnerable population – including at least one documented instance of a patient under sedation – to undergo these extreme procedures erodes the ban on eugenics.” The letter continued, “In our view, such practice violates constitutional protections against cruel and unusual punishment; protections that you were appointed to enforce.”

“We’ve been assured that this practice hasn’t occurred since [2010], but the question of course is why was this occurring?” asked state Senator Hannah-Beth Jackson. “We want to make absolutely sure – whether we have to do legislation or what – this procedure never becomes the practice it had in the past.”

In a July 10, 2013 letter to the Medical Board of California, state Senator Ted Lieu singled out Dr. Heinrich for criticism; Heinrich had told CIR that the \$147,460 paid to doctors who performed the sterilizations was not a large amount compared to what the state would save in welfare costs.

“Particularly troubling was a statement by Dr. James Heinrich, ... who made a reference that tubal ligations on inmates save in welfare paying for these unwanted children – as they procreated more,” wrote Senator Lieu. “Whether a surgical procedure would have any hypothetical effect on welfare rolls

should never, ever play a part in a doctor’s decision.”

“We also want to find out, who are the women who have been sterilized while in prison? Let’s break them down by race, by economic situation, by age, by number of children they have,” added Senator Jackson. “One could argue, almost by definition, that being incarcerated takes away your ability to voluntarily consent.”

Former Valley State prisoner Crystal Nguyen, 28, who worked in the prison’s infirmary in 1997, said she frequently heard medical staff asking female prisoners to agree to sterilization.

According to CIR, Nguyen told investigators, “I was like, ‘Oh my God, that’s not right.’ Do they think they’re animals, and they don’t want them to breed anymore?”

Dr. Heinrich retired in 2011 but was rehired and continued working at Valley State Prison until December 2012. He has been linked to arranging 378 other sterilizations between 2006 and 2012, including hysterectomies, the removal of ovaries and a procedure called endometrial ablation, which destroys the lining of the uterus.

Dr. Ricki Barnett with the federal receiver’s office said such procedures are not banned in California prisons, but the sheer number attributed to Heinrich caused officials to take notice. Dr. Heinrich declined to comment on the sterilizations; according to news reports, he had settled a number of lawsuits related to medical care before being hired by the CDCR.

Justice Now, a prisoner advocacy group, reported that at least 10 women have alleged they were sterilized improperly, including one who underwent an operation to remove cysts on her ovaries. Kelli Thomas, a prisoner at Valley State, told the *Los Angeles Times* that she gave the doctor permission to remove her ovaries only if cancer was discovered. Her medical records indicated that no cancer was found but her ovaries were removed anyway, leaving her sterile.

“I feel like I was tricked,” she said. “I gave permission to do it based on a [cancer] diagnosis, and the diagnosis wasn’t there.” ■

Sources: *Los Angeles Times*, [www.foxnews.com](http://www.foxnews.com), [www.theguardian.com](http://www.theguardian.com), [www.npr.org](http://www.npr.org), *New York Daily News*, [www.sacbee.com](http://www.sacbee.com), [www.jnow.org](http://www.jnow.org)



## FREE LOCAL NUMBER WITH SENTEL

*Get a local Number & Save up to 85% on Prison Calls with Sentel.*

*Save on International Calls with Sentel*

Below is a summary of the Great plans we offer:

FREE USA PLAN	USA -100	USA UNLIMITED	INTERNATIONAL
<b>Features:</b>	<b>Features:</b>	<b>Features:</b>	<u>Features:</u>
Price: \$0.00 20 Free Minutes Risk Free Sign Up Additional Minutes @ 6 cent	Price: \$4.99 100 Minutes Additional lines @ \$2.5 Additional Minutes @ 5 cents	Price: \$9.99 Unlimited USA Fair Minute Usage Limited Time offer Only Hurry Up !!! You have it You keep it	Price for 1 <sup>st</sup> line: \$1 Add a line: 50 cents Rates Based Upon Destination Calls as low as 10 cents/mn Guaranteed lowest rates

## NÚMERO LOCAL GRATIS CON SENTEL

Obtenga un número de locales y ahorra hasta un 85% en la prisión de llamadas con Sentel.

*Ahorra en llamadas internacionales con Sentel*

A continuación se muestra un resumen de los Grandes planes que ofrecemos:

GRATIS EE.UU. PLAN	EE.UU. -100	EE.UU. ILIMITADO	INTERNACIONAL
<u>Características:</u>	<u>Características:</u>	<u>Características:</u>	<u>Características:</u>
Precio: \$ 0.00 20 minutos gratis Riesgo Inscribirse Minutos adicionales @ 6 cents	Precio: \$ 4.99 100 Minutos Las líneas adicionales @ \$ 2,5 Minutos adicionales @ 5 cents	Precio: \$ 9.99 Ilimitado EE.UU. Uso de minutos Fair	Precio para 1 <sup>a</sup> línea: \$ 1 Agregue una línea: 50 cents de dólar Precios basados en la Destino Las llamadas de tan solo 10 cents Garantizado los mejores precios

**We accept debit and credit card payments, institutional checks, bank deposits and paypal**

Sentel, Sentel  
9550 S. Eastern Ave Ste 253  
Las Vegas, NV 89123  
Ph: 702-430-9445  
Email: [sentel.nv@gmail.com](mailto:sentel.nv@gmail.com)  
Website: [www.sentelinmatecall.com](http://www.sentelinmatecall.com)

# Kentucky Supreme Court: Probation Cannot be Extended for Sex Offender Treatment

THE SUPREME COURT OF KENTUCKY has held that a probationer's period of probation cannot be extended to require completion of a sex offender treatment program.

Elmer David Miller was originally charged with felony first-degree unlawful transaction with a minor. He entered into a plea agreement for a misdemeanor charge of criminal attempt to commit first-degree unlawful transaction with a minor, because the victim was over the age of sixteen. The plea agreement included two years of probation and required Miller to "[a]ttend any counseling recommended by probation and parole."

Following the recommendation of the Division of Probation and Parole, Miller enrolled in the state's sex offender treatment program. Shortly before his period of probation ended, his probation officer informed the trial court that Miller would be unable to complete the program before the expiration of his probation term. The court then held a hearing and extended Miller's probation until he finished the three-year sex offender treatment program.

Miller challenged the trial court's order and the Court of Appeals reversed, holding that he had not agreed to the extension of his probation and, in fact, had opposed it at the hearing. The appellate court remanded the case for a determination of whether Miller's term of probation should have been allowed to expire or should have been revoked for his failure to complete the treatment program. See: *Miller v. Commonwealth of Kentucky*, 2010 Ky. App. Unpub. LEXIS 1001 (Ky. Ct. App. 2010).

On discretionary review by the Kentucky Supreme Court, the state agreed that the Court of Appeals was correct in concluding Miller's term of probation could not be extended. The Court concurred, stating the statutory two-year period for misdemeanors is an "absolute limit, absent some overriding statute or waiver by the defendant," neither of which applied in this case.

The Supreme Court further found that Miller had not been convicted of a sex crime, because under state law criminal attempt is a "separate, inchoate offense." As such, the Division of Probation and Parole

incorrectly believed Miller had to complete a sex offender treatment program. That program, the Court held, only applies to felony sex offenses and thus was not applicable to Miller, who was convicted of a misdemeanor.

Finally, the Court found that a term of probation cannot be extended beyond the limit set by statute to facilitate completion of a sex offender treatment program. Combining that legal principle with

precedent that a trial court must hold a hearing and revoke probation before the period of probation ends, the trial court was without jurisdiction to act in Miller's case as its order extending his probation was entered months after his probationary term was over.

Consequently, the case was remanded to discharge Miller from probation. See: *Miller v. Commonwealth of Kentucky*, 391 S.W.3d 801 (Ky. 2013). ■

## Former Detainee Alleges Unconstitutional Conditions at Illinois Jail, Accepts \$7,501 Judgment

ON APRIL 24, 2013, THE SEVENTH Circuit Court of Appeals held that a former pretrial detainee at the Edgar County Jail (ECJ) in Illinois stated a claim concerning unconstitutional conditions of confinement at the facility. The appellate court also affirmed the dismissal of a claim alleging deliberate indifference to the detainee's medical needs.

Over a period of two-and-a-half years, Richard D. Budd served three stints at ECJ as a pretrial detainee. He initially spent 45 days at the jail following a 2009 arrest. During that time he was confined with eight other detainees in an area of the facility intended for three; he had to sleep on the floor alongside broken windows and damaged toilets.

After another arrest two years later, Budd was placed in a section of the ECJ where overcrowded conditions again forced him and other prisoners to sleep on the floor amid water from a shower leak. The cells had broken windows, exposed wiring, extensive rust, sinks without running water, toilets covered in mold and spider webs, and a broken heating system. ECJ staff did not provide prisoners with cleaning supplies.

Four months later, Budd was again arrested and had to sleep on the floor in an ECJ cellblock. The cell's vents were blocked, the heating and air conditioning systems did not work, and detainees were denied recreation. While living in these conditions, something scratched or bit Budd's leg,

resulting in an infection and swelling. He was taken to a local hospital for treatment after contacting the Sheriff.

Budd's civil rights complaint alleged that conditions at ECJ fell below constitutional standards and that jailers were deliberately indifferent to his medical needs. The district court dismissed the suit for failure to state a cause of action.

On appeal, the Seventh Circuit held the complaint stated a claim as to the conditions at ECJ. The appellate court noted that Budd had attached two newspaper articles to his complaint in which Edgar County Sheriff Edward Motley was quoted describing the jail as not "livable" and violating "acceptable standards." The Court of Appeals said the unhygienic conditions described in Budd's complaint had been held to state a claim in other cases under the Fourteenth Amendment, as he was a pretrial detainee. Moreover, three doctors had told Budd that his infection was caused by unsanitary conditions at the jail, so the harm was not speculative. He also alleged the conditions at ECJ had traumatized him, and the Seventh Circuit found Budd's "exposure to psychological harm or a heightened risk of future injury" from being held at the jail was itself actionable.

Further, jails must meet minimal standards of habitability, such as adequate bedding and protection from cold. Allegations of overcrowding, lack of recreation and poor air circulation in combination likewise contribute to a conditions of confinement

claim. Having found that Budd stated such a claim, the appellate court concluded the lawsuit named the Sheriff in his official capacity and thus should be allowed to proceed.

Budd's medical claim, however, failed. The Court of Appeals noted that he was seen by a nurse as soon as he complained about his leg injury. He was also promptly taken to a hospital after contacting the Sheriff. Therefore, the district court's order was vacated in part and affirmed in part, and on remand the lower court was ordered to rule on Budd's motion for appointment of counsel. See: *Budd v. Motley*, 711 F.3d 840 (7th Cir. 2013).

Following remand, on September 4, 2013 the district court denied the defendants' Fed.R.Civ.P. 12(f) motion to strike portions of Budd's amended complaint. Those portions included "facts which tend to show that the Defendants were well aware of the deplorable conditions at the Edgar County Jail before, during, and after Plaintiff's injuries, but exhibited deliberate indifference to the jail's deplorable conditions." In denying the motion, the court found that the challenged portions of the amended complaint were relevant to Budd's claims against the county. See: *Budd v. Edgar County Sheriff's Office*, 2013 U.S. Dist. LEXIS 125823 (C.D. Ill. 2013).

On January 3, 2014, Budd accepted a Fed.R.Civ.P. Rule 68 offer of judgment by Edgar County and resolved his lawsuit for \$7,501 in damages plus taxable court costs and attorney's fees. ■

## Seventh Circuit Upholds FTCA Venue Transfer

**T**HE SEVENTH CIRCUIT COURT OF APPEALS has upheld the transfer of a former federal prisoner's negligence action from Illinois to Kansas.

Daniel Hudson relocated to Illinois following his release from a federal prison in Kansas. He filed a Federal Tort Claims Act (FTCA) suit in U.S. District Court in Illinois, alleging that Kansas medical staff had negligently misdiagnosed a blood clot in his leg.

The district court granted the defendants' motion to transfer the case to a federal court in Kansas pursuant to 28 U.S.C. § 1404(a), because the principal witnesses were located in Kansas and the per-judge caseload in that state was lighter than the caseload in Illinois.

Hudson then filed a mandamus petition with the Seventh Circuit, seeking to return venue to Illinois. He argued that he and five of his witnesses – including three treating physicians – resided in Illinois.

The Court of Appeals agreed that mandamus was the proper method to challenge the district court's transfer order: "The grant of the government's motion to transfer the case was an unappealable interlocutory order, but an unappealable order can in exceptional circumstances be reviewed by a mandamus proceeding. The grant of a motion to transfer is an appealing candidate for such review."

The appellate court found that "Al-

though the question of transfer in this case is a close one, we cannot say that the district judge committed a clear error in holding that the defendants had made the required showing: More than two-thirds of the potential witnesses (12 out of 17) are either in Kansas, just across the border in Missouri, elsewhere in Missouri, or in California, which is closer to Kansas than it is to Illinois."

The Seventh Circuit further noted that "in our age of advanced electronic communication ... changes of venue motivated by concerns with travel inconvenience should be fewer than in the past." However, Hudson did "not argue against the transfer on the ground that the electronic revolution has erased the advantages that the Kansas venue would once undoubtedly have had under the facts of this case." Therefore, his mandamus petition was denied. See: *In re Hudson*, 710 F.3d 716 (7th Cir. 2013). ■

### Writing to Win

Need to write better? *Writing to Win* will teach you the basics of how to compose clear and convincing written and oral legal arguments! 270 pages packed with solid, practical advice and tips.

\$19.95 from PLN's Book Store!

See page 61 for more information.

### CALIFORNIA LIFER NEWSLETTER

**CLN:** A comprehensive newsletter mailed every 6-8 weeks. State and federal cases, parole board news, statistics, legislation and articles on prison, parole and correctional issues of interest to inmates and their families.

**CLN** also provides services such as copying and forwarding federal and state cases, articles and news and materials available on the Internet.

**SUBSCRIPTIONS:** Prisoners: \$25 (or 80 stamps) per year (6 issues minimum). Free persons: \$90.

**CLN, PO Box 277, Rancho Cordova, CA 95741**

### Incarcerated Entrepreneur Freight Agent Training Course

**12 Module Training course takes you**

**through everything you will need to graduate and be a certified freight agent moving freight for commission.**

**Toll Free 1-877-238-9185**

**S.A.S.E. For more information To:**

**Lone Wolf Institute**

**1015 Townsend Dr. Pochontas, AR 72455**

**Payment plans available from \$25.00**

**[lonewolfarkansas@gmail.com](mailto:lonewolfarkansas@gmail.com)**



## Alabama Sheriff Made Party on Counterclaim Alleging Prisoners Subjected to Sexual Abuse

**T**HE ALABAMA SUPREME COURT HAS held that a third party to a lawsuit may be made a party when a counterclaim is filed. The Court also held a sheriff named as a defendant was not entitled to qualified immunity on a federal claim in her individual capacity, but was entitled to immunity on a federal official capacity claim and state law claims.

The case involved a lawsuit filed by Scott Cotney, an administrator at the Clay County Jail, against former jail guard Phillip E. Green and prisoners Anthony Haywood and Daniel Hall, alleging defamation, slander, libel, invasion of privacy, negligence and wantonness. The claims resulted from a report filed by Green, Haywood and Hall with the Alabama Department of Corrections, claiming that Cotney had used his position to sexually abuse or assault Haywood and Hall while they were held at the jail.

Haywood and Hall filed a counterclaim against Cotney for violations of their Fourth, Eighth and Fourteenth Amendment rights. They also filed counterclaims against the Clay County Commission and Sheriff Dorothy “Jean Dot” Alexander, in her official and individual capacities. They alleged Alexander “had knowledge of [Cotney’s] unlawful acts ... and permitted the abuse to occur,” and made the same claims against her as those against Cotney in addition to a claim of negligent supervision.

The counterclaims against the Commission were dismissed with Hall and Haywood’s consent, and the circuit court granted Alexander’s motion to dismiss without specifying its reasons for doing so. On appeal, the Alabama Supreme Court addressed the grounds in Sheriff Alexander’s motion.

First, the Court held that Alexander could be made party to a counterclaim or cross-claim under Rules 13(h) and 20(a) of the Alabama Rules of Civil Procedure, and the circuit court’s dismissal on that basis was error. Next, Haywood and Hall were convicted felons during at least part of the time the tortious conduct at the jail occurred, so dismissal of their Eighth Amendment claim also was erroneous.

The Supreme Court further found

that Hall and Haywood alleged a causal connection between Sheriff Alexander and the deprivation of their Fourth Amendment rights related to strip searches, under a theory of supervisory liability; thus, she was not entitled to have the “claims against her dismissed on the basis that she cannot be held vicariously liable for the alleged violations.”

Finally, the Court addressed immunity issues, holding that Alexander was entitled to immunity under Article I § 14 of the Alabama Constitution on state law claims in her individual and official capacities. It also held she was entitled to Eleventh

Amendment sovereign immunity as to a federal official capacity claim.

However, Sheriff Alexander was not entitled to qualified immunity on a federal individual capacity claim at this stage of the proceedings, as Hall and Haywood had alleged sufficient facts to show her failure to act led to a violation of their rights. They also alleged the harm they suffered resulted from customs or policies attributable to Alexander.

The circuit court’s order was therefore affirmed in part and reversed in part, and the case remanded. See: *Haywood v. Alexander*, 121 So.3d 972 (Ala. 2013). ■

## Adverse Inference Instruction Required for New York Jail’s Destruction of Video Evidence

**T**HE NEW YORK COURT OF APPEALS has held that when a criminal defendant acts with due diligence to demand the preservation of evidence that is reasonably likely to be of material importance, and the evidence is destroyed by the state, the defendant is entitled to an adverse inference jury instruction.

Dayshawn P. Handy was charged with assaulting three deputy sheriffs at the Monroe County Jail. The first two assaults took place on November 8, 2006 and the third incident occurred on January 8, 2007. Handy was acquitted by a jury on counts one and three, but convicted on count two.

The count two assault charge involved an altercation with Deputy Brandon Saeva, who approached Handy in his cell after Handy returned from the shower. Saeva noticed that the boxers and sandals Handy was wearing were not “jail issue.” According to Saeva, Handy refused to turn over the sandals and swung at him. They scuffled, and other deputies helped Saeva gain control of Handy.

Deputy Timothy Schiff testified that he assisted in subduing Handy after the altercation with Saeva. When he reached for Handy’s right leg to control him, Schiff said Handy kicked back, injuring his thumb. Handy, however, testified that Saeva swung at him and then tackled him; he also claimed he never kicked at

the deputies. Handy was convicted of the assault charge involving Deputy Schiff, but not Saeva.

At issue was a video camera in the cell block that faced toward Handy’s cell, but not “directly” toward it. Saeva viewed the video recorded on November 8. He said that since the camera showed “only a part of his doorway, but not much,” the video captured a “very small part” of the incident. It was undisputed that the video was destroyed prior to trial.

Handy argued it was error for the trial court to refuse to charge the jury with an adverse inference instruction due to the missing video evidence with respect to the count two assault charge. The Court of Appeals agreed.

In response to the state’s assertion that it was “merely speculative” that the video was exculpatory, the Court noted that such speculation was caused by the destruction of the video, and that requiring an adverse inference instruction would mitigate the harm to the defendant caused by the loss of evidence.

“We hold that when a defendant in a criminal case, acting with due diligence, demands evidence that is reasonably likely to be of material importance, and that evidence has been destroyed by the State, the defendant is entitled to an adverse inference charge,” the Court wrote.



Moreover, the Court of Appeals said its ruling would increase the chances that prison and jail staff will take whatever steps are necessary to ensure that video evidence

is not erased or destroyed when it is foreseeable an incident will lead to a criminal prosecution.

Accordingly, Handy's conviction was

reversed and the case remanded for a new trial on the assault charge involving Deputy Schiff. See: *People v. Handy*, 20 N.Y.3d 663, 988 N.E.2d 879 (N.Y. 2013). ■

## Washington Jail Denied Good Time without Due Process; Rehearing Ordered

**T**HE WASHINGTON COURT OF APPEALS held in an unpublished opinion that a prisoner was denied good time credits without adequate due process protections.

Allen Michael Knoll was held in the Skagit County jail between March 2011 and August 30, 2011, when he was transferred to the Washington Department of Corrections. One day prior to his transfer, jail officials notified Knoll that he would not receive any good time credits because he "had been the subject of over 40 incident reports and had been disciplined 10 times for both major and minor rule violations."

Knoll requested a hearing, contending that he had not been disciplined 10 times. The hearing was held five hours later and "the hearing officer upheld the denial of good time credit," finding that Knoll had been the

subject of "43 reports, 10 disciplinary actions, and 2 instances of use of force" at the jail.

Knoll then filed a personal restraint petition, arguing that inadequate advance notice of the hearing and lack of specificity of the disciplinary actions deprived him of good time credits without due process.

The Court of Appeals accepted the state's concession that the jail's failure to provide Knoll with at least 24 hours to prepare for the hearing violated minimal due process requirements. The Court further found that "the notice provided only the number of incident reports and disciplinary actions. Without further identification or description of the disciplinary incidents at issue, the notice failed to provide sufficient information to enable Knoll to defend against the allegations."

However, following *In re PRP of Atwood*, 146 P.3d 1232 (Wash. Ct. App. 2006), the Court rejected Knoll's argument that restoration of good time credits was the proper remedy, as he had not lost previously-earned good time. Rather, he was only entitled to another hearing that comports with the minimal due process protections set forth in *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963 (1974).

"While it is true that Knoll is not entitled to litigate the underlying facts of his prior disciplinary incidents," the appellate court explained, "the existence of those disciplinary incidents must be established to support the denial of good time premised on the prior incidents." See: *In re PRP of Knoll*, 2013 Wash. App. LEXIS 498 (Wash. Ct. App. 2013) (unpublished). ■



**JailCallsUSA**  
**\$9.95** per month  
**\*UNLIMITED JAIL CALLS\***  
**"WE BEAT ALL OUR COMPETITORS"**  
**SWITCH TO US TODAY!!**  
 No Contracts  
 No Credit Checks  
 No Equipment to buy  
**LOWER THE CALL RATES FOR:**  
 GLOBAL TEL LINK  
 SECURUS  
 V-CONNECT  
 PAYTEL  
 ICSOLUTIONS  
 VAC  
 PLUS MORE  
**FEDERAL \* STATE \* COUNTY**  
 SAME DAY ACTIVATION - NO PER MINUTE CHARGES ON OUR END. JUST \$9.95 A MONTH!  
**GET A LOCAL NUMBER TODAY**  
**888-776-2012**  
**www.JailCallsUSA.com**  
 Online Payments Accepted **PayPal** 



**ORDER THE NEW PRISON OFFICIAL CATALOG - ONLY \$10**  
**PRISON OFFICIAL**  
 WWW.PRISONOFFICIAL.COM  
**ISSUE# 1 OR ISSUE#2**  
 \$ FREE HOT MODEL PHOTOS INCLUDED WITH PURCHASE!  
**CORRECTIONAL FACILITY APPROVED**  
**GET MAIL**  **DONT DELAY**  
**ORDER THE NEW PEN PAL LIST OF 50 REAL ADDRESSES TO FEMALES WAITING TO CORRESPOND TO PRISONERS**  
**RECENT PHOTOS INCLUDED!**  
**SEND \$49.95**  
 Inmates post your profile on our Pen Pal website **www.PrisonOfficial.com**  
 2 year membership - Send \$30  
 250 word limit send S.A.S.E for return of your photo  
**Send Facility Checks/Money Orders To:**  
**MUST ADD \$2 S/H TO ALL ORDERS**  
**PRISON OFFICIAL**  
**P.O. BOX 1427**  
**WARRENVILLE IL 60555**

# California County Not Liable for Misconduct of Jail Guard Not Acting within Scope of Employment

ON APRIL 3, 2013, THE CALIFORNIA Court of Appeal held that a county is not liable for damages arising out of the misconduct of one of its jail guards when such misconduct is deemed to be “purely personal” and thus not within the scope of the guard’s employment.

In February 2005, Paul and Felicia Perry were injured in a car accident involving a vehicle owned by Alejandro Vital, who was then employed as a veteran jail guard by Fresno County. After the Perrys filed a personal injury suit against Vital, he became obligated to pay their medical bills resulting from the accident because his insurance company refused to cover those expenses.

Vital then embarked on a scheme designed to intimidate the Perrys into dropping their lawsuit. He accessed information about “dangerous inmates” through the jail’s computer system, then sent them racially inflammatory and insulting letters in Paul Perry’s name using his return address, hoping they would provoke the prisoners to retaliate against the Perrys.

Vital also wrote an anonymous letter to Fresno High School officials, accusing Perry, a coach, of once molesting a basketball player at the school.

An investigation led to Vital’s eventual admission that he wrote the letters to the jail prisoners and to Fresno High School, as well as insulting letters to members of a street gang who, in response, said they would “do a drive-by” at the home of Paul Perry’s 70-year-old mother.

Vital was fired by the county and criminally charged with identity theft, extortion and attempting to dissuade a witness from testifying. He entered a no contest plea to three felony counts and was sentenced in November 2006 to one year in jail. In court, he explained his actions by saying, “I just lost my mind.”

The Perrys filed suit against Fresno County on the theory that under the doctrine of respondeat superior, an employer is liable for the torts of its employees when those torts are committed within the scope of their employment.

The trial court granted the county’s motion for summary judgment, finding that Vital’s actions were not within the scope of his duties as a jail guard.

The Court of Appeal affirmed, holding

that although Vital’s position at the jail gave him access to the information he needed to carry out his scheme, the act of writing and mailing fraudulent letters was “purely personal” and not within the scope of his employment. Thus, the county could not be

held vicariously liable for his actions. See: *Perry v. County of Fresno*, 215 Cal.App.4th 94, 155 Cal.Rptr.3d 219 (Cal. App. 5th Dist. 2013), rehearing denied, review denied. ¶

Additional source: [www.star-telegram.com](http://www.star-telegram.com)

## Texas Courts Examine Proof of Ability to Pay Probation Fees before Revocation

by Matt Clarke

IN A NOVEMBER 14, 2012 OPINION, THE Texas Court of Criminal Appeals held prosecutors are not required to prove that a probationer was able to pay fees and fines when his probation was revoked due to nonpayment. The Court of Appeals reversed the probation revocation on remand, and the Court of Criminal Appeals granted discretionary review of that ruling in June 2013.

Raimond Kevon Gipson, who was serving a term of probation, failed to pay his fees and fines. He was required to pay a \$500 fine, supervision fees, court costs, a pre-sentence investigation (PSI) fee, a \$50 Crime Stoppers fee and \$1,000 in attorney fees. [See article in this issue of *PLN* regarding Texas criminal court fees].

The state filed for revocation due to the nonpayment. Gipson pleaded “true” to failure to pay fees but contested other reasons for the revocation. At no time did the state claim he was able to pay the fees but willfully failed to do so; Gipson also did not raise the issue of inability to pay. The trial court revoked his probation and sentenced him to eight years in prison.

On appeal, Gipson claimed that the state’s failure-to-pay statute, art. 42.12 § 21(c), Texas Code of Criminal Procedure, required the state to show that he was able to pay but willfully did not. He also claimed that *Bearden v. Georgia*, 461 U.S. 660 (1983) established a constitutional requirement that the state prove ability to pay before revoking his probation. The state maintained that by pleading true to the allegation, Gipson had waived any such claims.

Without addressing the state’s procedural arguments the Court of Appeals reversed the trial court’s order, holding that the failure-to-pay statute required the state

to first prove ability to pay before revoking probation. The state petitioned the Texas Court of Criminal Appeals for discretionary review, which was granted.

The Court of Criminal Appeals held that the lower appellate court must first determine whether the alleged error had been preserved for review or waived by Gipson when he pleaded true to failure to pay fees. Because a plea of true normally waives any challenge to sufficiency of evidence of a probation revocation on appeal, this analysis must be performed within the framework of *Marlin v. State*, 851 S.W.2d 275 (Tex. Crim. App. 1993), in which the Court of Criminal Appeals held that “certain requirements and prohibitions are absolute and ... certain rights must be implemented unless expressly waived.”

Because it disagreed with the constitutional and statutory analysis of the appellate court, the Court of Criminal Appeals provided its own analysis.

The Court held that *Bearden* did not impose a duty on prosecutors to prove ability to pay; rather, it imposed a duty on the trial court to make an inquiry into ability to pay. The Court further held that the failure-to-pay statute did not cover two of the fees Gipson did not pay – the fees for Crime Stoppers and PSI. Therefore, if the Court of Appeals determines on remand that pleading true to failure to pay did not waive that issue for appellate review, it must decide whether Texas common law or the U.S. Constitution requires the prosecution to prove inability to pay prior to a probation revocation.

The judgment of the Court of Appeals was reversed and the case remanded to that court for further proceedings. See: *Gipson v. State*, 383 S.W.3d 152 (Tex. Crim. App. 2012).

Following remand, on March 13, 2013 the Court of Appeals again reversed the trial court's revocation of Gipson's probation. The appellate court found that "Generally, a defendant cannot challenge a revocation finding to which he pleaded 'true'; however, "[i]n this case, the record is devoid of evidence showing that Gipson's failure to pay attorney's fees, community supervision fees,

or court costs, including PSI and Crime Stoppers fees, was willful."

Therefore, the Court of Appeals held the trial court had abused its discretion by revoking Gipson's probation, which affected his substantial rights by subjecting him "to a prison sentence rather than continued community supervision." With respect to Gipson's argument that the trial court vio-

lated his due process rights, the appellate court found he had failed to preserve that issue for review because he did not raise it before the trial court. See: *Gipson v. State*, 395 S.W.3d 910 (Tex. App. 2013).

On June 26, 2013, the Texas Court of Criminal Appeals granted the state's petition for discretionary review, and a decision remains pending. ■

## Second Circuit: Videoconference at Resentencing Violates Right to be Present

**T**HE SECOND CIRCUIT COURT OF APPEALS has held that resentencing a defendant by videoconference violated his right to be present in court, and the government failed to satisfy its burden of establishing that the defendant knowingly and voluntarily waived his right to be present. Under the circumstances, however, the error was not prejudicial.

On November 1, 2000, alleged al Qaeda member Mamdouh Mahmud Salim was confined at the Metropolitan Correctional Center (MCC) in New York, awaiting trial on federal terrorism charges.

Salim and his cellmate, a co-defendant in the terrorism case, plotted "to take a guard's keys so that Salim could attack his lawyers in an attorney-inmate meeting room. Their goal was to force Salim's attorneys to withdraw their representation so that District Judge Sand, who was presiding over the terrorism case and previously had denied Salim's repeated requests for new lawyers, would have to grant substitute counsel."

As Salim was escorted to his cell from a meeting with his lawyers, under the guise of retrieving additional legal materials, Salim and his cellmate assaulted MCC guard Louis Pepe, stabbing him in the left eye with a sharpened plastic comb. Before he

could attack his attorneys, however, Salim was overpowered by other guards.

"Pepe was severely injured. He lost his left eye, incurred reduced vision in his right eye, and suffered brain damage that left his right side partially paralyzed and interfered with other normal functions, including his ability to speak and write."

On April 3, 2002, Salim pleaded guilty to conspiracy to murder and attempted murder of a federal official for the attack on Pepe. He was initially sentenced to 384 months in prison, which was later reversed on appeal. See: *United States v. Salim*, 549 F.3d 67 (2d Cir. 2008), *cert. denied*.

The district court imposed the same sentence on remand and Salim again appealed. This time, the Second Circuit agreed with the government that a terrorism enhancement was appropriate, and thus vacated the sentence and remanded.

On August 31, 2010, the district court held a second resentencing hearing which Salim attended by videoconference. The court imposed a life sentence as a terrorism enhancement, and Salim appealed a third time. Among other issues, he argued that he had not voluntarily waived his right to be present at the hearing, because the waiver "was premised on

his fear of abuse by correctional officers" who, he alleged, had previously beaten and spit on him when he was moved to another prison.

The Court of Appeals recognized that Salim had a right to be present at a sentencing hearing under "both the Constitution and Federal Rule of Criminal Procedure 43(a)(3)," which extended to resentencing. As a matter of first impression in that circuit, the appellate court held that the right to be present requires a defendant's physical presence and is not satisfied by appearing via videoconference.

The Second Circuit further found the district court had erred in determining that the government had satisfied its burden of proving that Salim knowingly and voluntarily waived his right to be present. The appellate court affirmed the district court's sentencing order, however, because "Salim has not explained why his absence might have altered his resentence, nor has he demonstrated that any error in his resentencing was so egregious as to warrant relief on plain error review." See: *United States v. Salim*, 690 F.3d 115 (2d Cir. 2012), *cert. denied*.

On January 9, 2014, Salim filed a motion to vacate under 28 U.S.C. 2255, which remains pending. ■



chiang-lin.com

### Law Office of **TIMOTHY C. CHIANG-LIN, PLLC**

Representing Individuals Sexually Abused  
in Washington State's Foster Care, Group Home,  
City, County Jail and Prison

**2155 112th Ave NE, Bellevue, WA 98004**

**tim@chiang-lin.com**

### **Pen Pals for Prisoners**

Your ad on the Internet worldwide:

One year for \$9.95. Mail name &  
address for FREE order form or online:

**www.PrisonerPal.com**

PO Box 19689

Houston, TX 77224

# Eighth Circuit: Denial of Nominal Damages Jury Instruction was Improper

**T**HE EIGHTH CIRCUIT COURT OF APPEALS held on September 4, 2012 that a district court erred when it refused to give a nominal damages jury instruction in a lawsuit brought by a Missouri state prisoner. Another trial was held in June 2013 following remand, and the jury again ruled in favor of the defendant prison officials.

Missouri Department of Corrections (DOC) policy allows a prisoner to declare his cellmate an “enemy” and be removed from the cell if he fears for his safety. The prisoner is then placed on a restraint bench until a compatible cellmate is found, a single-person cell becomes available or the prisoner elects to return to the original cell. While on the restraint bench, bathroom breaks and small amounts of water are allowed but food is not provided per DOC policy.

Arthur E. Taylor, Jr., was confined at the maximum-security Jefferson County Correctional Center when he declared his cellmate an enemy and was removed from the cell on September 9, 2005.

Taylor was shackled to a metal restraint bench, where he remained until he was placed in a cell with a new cellmate on September 11. He was unable to sleep during the two days he was shackled to the restraint bench in an upright position. Therefore, once in the new cell, he slept through breakfast and lunch.

Later that day, Taylor declared his new cellmate an enemy and was returned to the bench. This time he remained on the restraint bench until the evening of September 14, 2005.

Again, pursuant to policy, Taylor was not fed while on the bench. He first ate again on the morning of September 15, 2005 after missing about twelve meals.

Taylor filed suit in federal court, alleging that the failure of prison officials to provide him with food violated the Eighth Amendment. The case proceeded to trial and the district court gave Taylor’s requested excessive force jury instruction but refused to give his nominal damages instruction. The jury returned a verdict for the defendants, finding zero damages for Taylor.

The Eighth Circuit reversed, holding that “the district court abused its discretion

in not submitting the requested nominal damages instruction to the jury.”

The appellate court rejected the defendants’ argument that the error was harmless, finding that “if the jury analyzed this element first and found no damages, it could not find excessive force.” As such, “the lack of a nominal damages instruction had a probable effect on this verdict.” Justice Kermit E. Bye issued a separate opinion that concurred in part and dissented in part. See: *Taylor v. Dormire*, 690 F.3d 898 (8th Cir. 2012).

Following remand, on May 14, 2013

the district court denied the defendants’ motion for summary judgment in part and granted it in part, and denied Taylor’s motion to amend his complaint to add a new defendant. See: *Taylor v. Dormire*, 2013 U.S. Dist. LEXIS 68062 (W.D. Mo. 2013).

The case went to another jury trial in June 2013, and the jury found in favor of the defendants on all counts. The district court denied Taylor’s motion for a new trial and he filed an appeal, which remains pending. The Missouri DOC has since revised its policy related to feeding prisoners while they are on a restraint bench. ■

## Taylor County, Texas Rarely Disciplines Jailers

**C**OMPARED TO SCANDALS AT THE HARRIS County Jail in Houston – where guards have assaulted and had sex with prisoners, mistakenly released prisoners and abandoned their posts to play dominos [see: *PLN*, Sept. 2013, p.23] – problems at the Taylor County Jail in Abilene, Texas seem fairly tame.

According to news reports, 28 of 135 employees at the Taylor County jail were disciplined in the three years prior to 2012, but the disciplinary action was minor and the misconduct much less serious than at Harris County. None of the discipline resulted in termination.

Former Taylor County Sheriff Les Bruce had a three-tier approach to employee discipline. First, an employee was given a letter of counseling. If that didn’t correct the problem, a letter of reprimand was issued. The last resort, termination, was reserved for when the letters did not have the desired effect of correcting errant behavior.

During the three-year period, two jail guards were reprimanded for “major booking errors.” One received a letter of counseling after he was caught surfing the Internet on the job after having received repeated prior warnings.

Other deputies were reprimanded for sleeping while on the job or in connection with the escape of two prisoners. One received a letter of counseling after five incidents of verbally abusing prisoners within nine months. Another employee was

reprimanded for making “several medication errors on numerous times.”

One jailer didn’t check on a noise coming from a cell block which turned out to be a prisoner banging his head against the walls and doors, injuring himself enough to bleed from a head wound. The same guard was later disciplined again for yelling at prisoners in a cell block who were threatening to riot if the air conditioner wasn’t repaired, which allegedly caused the prisoners to become more aggressive.

Another jailer was reprimanded for releasing a prisoner a month early; the prisoner later turned himself in to complete his remaining sentence.

Repeated tardiness was also a problem among employees at the jail. Then-Sheriff Bruce noted that was a serious issue due to the need to maintain a mandatory guard-to-prisoner ratio at the facility.

“It’s very important to have those jailers there to receive briefing notes during shift changes,” he said. “They need to know what has been going on in that facility since they left.”

So long as misconduct by Taylor County jail employees mainly involves yelling at prisoners, surfing the Internet and being late for work, though, such transgressions pale in comparison to problems at other jails where guards have sexually abused prisoners or beaten and tasered them – sometimes to death. ■

Source: [www.correctionsone.com](http://www.correctionsone.com)



## D.C. Circuit Holds PLRA's Exhaustion Requirement Inapplicable to Former Prisoner

**T**HE CIRCUIT COURT OF APPEALS FOR the District of Columbia has held that the administrative exhaustion requirement of the Prison Litigation Reform Act (PLRA) does not apply to suits filed by persons who are no longer incarcerated.

The lawsuit at issue, filed by former prisoner John B. Lesesne, alleged permanent, life-threatening injuries suffered while in the custody of the District of Columbia (D.C.) Department of Corrections (DOC). Lesesne was involved in an altercation on March 30, 2008 in which he was shot in the lower abdomen, causing neurological damage to his leg.

He was arrested and transported to a hospital where he remained in the custody of the D.C. Metropolitan Police for the next 48 hours. He was then taken into DOC custody but remained cuffed by his wrist and ankle to the hospital bed.

As a result of the injury to his leg, doctors prescribed physical and occupational

therapies and directed Lesesne to walk in the hospital hallway. However, even after the doctors faxed their recommendations to the DOC, guards did not let Lesesne walk in the hallway and restrained movement of his injured leg.

When he was discharged from the hospital on April 8, 2008, guards forced Lesesne to walk to the transport vehicle in full restraints; he fell when guards attempted to lift him into the vehicle. Shortly after his arrival at the D.C. Jail infirmary, Lesesne was re-hospitalized due to signs of distress resulting from the transport.

He was diagnosed with having suffered a pulmonary embolism and placed in intensive care; once again, his leg was restrained to the bed. Lesesne was released from the hospital on April 21. Over the next four days, jail personnel failed to provide his prescribed medications, change his bandages or clean his gunshot wound and surgical incision. The failure to supply this

medical care resulted in the wound becoming infected.

Lesesne was released from jail on April 25, 2008. Two years later he filed a pro se civil rights complaint, arguing that the DOC's failure to treat his medical needs resulted in permanent, life-threatening injuries which require expensive therapeutic care, prescription drugs and constant pain management, as well as pain, suffering and emotional distress.

The district court granted the District of Columbia's motion for summary judgment on grounds that Lesesne had failed to exhaust administrative remedies at the D.C. Jail as required by the PLRA. The D.C. Court of Appeals joined its sister circuits in holding that the PLRA's exhaustion requirement did not apply to Lesesne because he was not confined when he filed his lawsuit, even though he had failed to make that argument before the district court. See: *Lesesne v. Doe*, 712 F.3d 584 (D.C. Cir. 2013). ■

### Stamps for **CASH!**

*Great Goods will buy your stamps!*

**70%** of Face Value: Complete books or sheets of Forever Stamps

**65%** of Face Value: Complete books, sheets, or rolls of 45-cent stamps

**60%** of Face Value: Complete books or sheets of high denomination stamps above 45-cent

**Payment sent within 24 hours of receipt.**

**W**E WILL SEND your funds as a money order, electronic payment to anywhere you designate. Great Goods can also send payment to an approved package vendor. Please provide complete name and address of where to send your funds. Also include any required forms or special instructions.

Minimum money order of \$20. • No quantity of stamps too big. • No taped or stapled stamps. • Used, damaged, torn stamps not accepted and cannot be returned. • Stamps **MUST** be on original postal backing. • Only new stamps accepted.

• No singles or partials will be accepted and they cannot be returned.

## GREAT GOODS

PO Box 399, West Chesterfield NH 03466

[www.greatgoods.org](http://www.greatgoods.org)

STAMPS © USPS. ALL RIGHTS RESERVED.

# Michigan Parole and Probation Supervision Scrutinized; Three Officials Fired

**T**HE FAILURE TO PROPERLY SUPERVISE parolees and probationers accused of committing high-profile murders has resulted in the firing of three Michigan Department of Corrections (MDOC) employees. The MDOC supervises around 20,000 parolees and 50,000 probationers.

"Our parole/probation staff performs critical functions that are vital to ensuring public safety," MDOC director Daniel H. Heyns said in a written statement to the *Detroit Free Press*. "The overwhelming majority of these employees do excellent work and help to make our communities safer."

The burden on those employees has increased in recent years as the MDOC overhauled its parole system to release more prisoners as a result of budget reductions. The changes resulted in a decreased prison population, saving the MDOC millions of dollars and allowing it to close several facilities. [See: *PLN*, June 2010, p.13; April 2009, p.1].

However, three incidents led to scrutiny as to how the MDOC is supervising parolees and probationers. The first involved the robbery and brutal murder of Nancy Dailey, 80, in her Royal Oak home on November 20, 2011. She was discovered with her hands bound and her throat slit.

Alan Wood, 49, and Tonia Watson, 40, were charged with first-degree murder for killing Dailey; both were on parole, and a condition of their parole prohibited them from associating with each other. A *Free Press* investigation found that MDOC employees had failed to violate their parole despite knowing they were associating with each other and were suspected of committing new crimes.

The parole agent supervising Wood was fired and the agent supervising Watson received a 30-day suspension. UAW, the union that represents Michigan state employees, blamed the parole agents' supervisors. "It was management who cut Alan Wood free," said UAW representative Rick Michael, a veteran probation officer. "No agent can send a probationer or parolee back to prison without management approval. This agent went to her supervisors, and they're the ones who said 'Set him free.'"

Wood went to trial in January 2013.

He was found guilty of first-degree murder, felony murder, larceny in a building and illegal use of a financial transaction device. He received a mandatory life sentence the following month, telling the judge to "just get on with the sentencing and stop your preaching." Tonia Watson pleaded guilty, testified against Wood and was sentenced to 23 to 80 years in prison.

The second incident involving supervision errors by MDOC officials was the January 31, 2012 murder of 12-year-old Kadejah Davis-Talton, who was shot through the door of her home as the result of an argument over a cell phone. Joshua Brown, 19, was charged with her murder.

In September 2010, Brown had been placed on probation for drug and home invasion convictions. The judge ordered him to wear an electronic monitor but his probation agent never activated the device. Four months before Davis-Talton's murder, Brown was a suspect in an armed home invasion; his probation agent was aware of the incident and wrote a report to the judge, but it was unclear whether the report was ever sent or received.

Brown's probation agent and the agent's supervisor were later fired. Michael said the agent was working to get Brown a landline phone when Davis-Talton was shot. "First of all, they have to have a telephone; we can't hook them up without one, and he was working on it," Michael stated. "He is a very good agent, and his supervisor was aware of what was going on."

On January 7, 2014, almost two years after fatally shooting Davis-Talton and following an initial mistrial, Brown was sentenced to 24 to 50 years for second-degree murder, 14 to 30 years for assault with intent to murder to be served concurrently, and two years for using a firearm during a felony.

The third incident involving MDOC officials occurred after Tucker Cipriano, 19, was placed on probation following his February 2012 release from jail on drug charges. Cipriano and a friend attacked his adoptive family with a baseball bat on April 16, 2012, bludgeoning his father to death and leaving his mother and brother in critical condition.

An MDOC probation agent was

placed on paid leave for losing track of Cipriano after he failed to show up for an April 5 meeting with the agent. A *Free Press* source said MDOC officials had trouble keeping up with Cipriano, who claimed he was homeless and staying in motels.

Cipriano pleaded no contest to felony murder and was sentenced in July 2013 to life without parole for killing his adoptive father. His co-defendant, Mitchell Young, also received a sentence of life without parole.

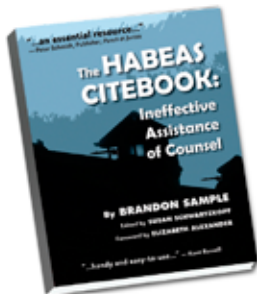
Michael said the blame for inadequate monitoring of parolees and probationers falls upon the MDOC and its management. "I believe that the union will be able to prove that there is a double standard in MDOC and that management is not capable of policing themselves," he stated. "There is a double standard – one for the agent and one for the manager – and when something goes wrong due to some shortcoming with MDOC, the agents are always blamed."

The MDOC, in turn, said it was taking action to increase supervision of parolees and probationers.

"The governor has made it clear that the level of violence in southeast Michigan, Flint and Saginaw is unacceptable. The Michigan Department of Corrections has a role to play in reducing that violence," said MDOC director Heyns. "I am putting measures in place that will improve supervision of parolees and probationers throughout Michigan. The restructuring of Ryan Correctional Facility to provide more custody beds for parole violators, aggressively going after absconders, embedding parole officers into police departments and auditing case loads are examples of some changes we are making that I believe will enhance public safety." ■

Sources: *Detroit Free Press*, [www.theoaklandpress.com](http://www.theoaklandpress.com), *Huffington Post*

**Hepatitis & Liver Disease:  
A Guide to Treating & Living  
with Hepatitis & Liver Disease**  
Revised ed. By Dr. Melissa Palmer  
See page 61 for more information.



**The Habeas Citebook: Ineffective Assistance of Counsel**  
**Brandon Sample**  
 ISBN: 978-0-9819385-1-6  
 Paperback, 224 pages

**\$49.95**

The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an invaluable resource that identifies hundreds of cases where the federal courts have granted habeas relief to prisoners whose attorneys provided ineffective assistance of counsel.



**Prisoners' Guerrilla Handbook to Correspondence Programs in the United States and Canada, 3rd Edition**  
**Jon Marc Taylor**  
 ISBN: 978-0-9819385-0-9  
 Paperback, 224 Pages

**\$49.95**

The greatly anticipated and newly updated third edition of the Prisoner's Guerrilla Handbook to Correspondence Programs in the United States and Canada has finally arrived! Author Jon Marc Taylor's brand new version is the latest in this unique and highly successful guidebook for the prisoner-student. This invaluable tool and how-to handbook provides the reader with step-by-step instructions to find the appropriate education program for correspondence high school, vocational, paralegal, undergraduate, and graduate courses offered in the U.S. and Canada today.



**Prisoners' Self-Help Litigation Manual, 4th Edition**  
**John Boston & Dan Manville**  
 ISBN: 978-0-1953744-0-7  
 Paperback, 960 pages

**\$45.95**

Prisoners' Self-Help Litigation Manual, in its much-anticipated fourth edition, is an indispensable guide for prisoner litigants and prisoner advocates seeking to understand the rights guaranteed to prisoners by law and how to protect those rights. Clear, comprehensive, practical advice provides prisoners with everything they need to know on conditions of confinement, civil liberties in prison, procedural due process, the legal system, how to actually litigate, conducting effective legal research, and writing legal documents. It is a roadmap on how to win lawsuits.

- ☐ Habeas Citebook,  
Ineffective Assistance of Counsel  
\$49.95
- ☐ Prisoners' Guerrilla Guide to  
Correspondence Programs  
3rd edition  
\$49.95
- ☐ Prisoners' Self-Help  
Litigation Manual  
4th edition  
\$45.95

**Shipping included in all prices**

**Order by mail, phone, or on-line.** Amount enclosed \_\_\_\_\_

By: ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_ ZIP \_\_\_\_\_

PUBLISHED BY

**PRISON LEGAL NEWS**  
 Dedicated to Protecting Human Rights

PO Box 1151 • Lake Worth, FL 33460  
 Tel 561-360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

# The Federal Tort Claims Act: A Primer

by Derek Gilna

**T**HE FEDERAL TORT CLAIMS ACT (FTCA) is outlined in various sections of Chapter 28 of the United States Code, which describe the steps necessary to file and maintain a tort action against the U.S. government.

The FTCA is the exclusive remedy for monetary damages for injuries “caused by the negligent or wrongful act or omission of any employee of the government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.” 28 U.S.C. § 1346(b)(1).

This means that the FTCA is only available to address acts or omissions by federal employees that constitute torts under state law. Constitutional violations are not actionable under the FTCA unless they are also torts. For example, deliberate indifference to serious medical needs, which is a constitutional violation under the Eighth Amendment, may also constitute the torts of medical malpractice or negligence.

The FTCA constitutes a limited waiver of the United States’ sovereign immunity, allowing claimants to sue the federal government; however, the FTCA does not apply to acts by federal employees that are outside the scope of their employment.

FTCA suits should not be confused with § 1983 actions, commonly known as civil rights complaints, which apply to defendants acting under color of state – not federal – law. FTCA claims are also distinguishable from *Bivens* claims brought under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), which provides a private action for monetary damages against federal officials who commit constitutional violations.

Failure to follow the requirements for FTCA claims may lead to dismissal, with prejudice, at an early stage of the proceeding – thereby preventing any recovery even for serious personal injuries and financial losses.

The most significant hurdles to be cleared to prevent an early dismissal of an FTCA action include the exhaustion of administrative remedies and detailed

notice requirements. The FTCA administrative process must be exhausted prior to filing an FTCA complaint, which is subject to dismissal on jurisdictional grounds if the claimant has failed to exhaust such remedies. See: *Plyler v. United States*, 900 F.2d 41 (4<sup>th</sup> Cir. 1990). Note that the administrative process, described below, is separate and distinct from the Bureau of Prisons’ grievance procedure, and that filing a grievance (i.e., a Form BP-9) does not satisfy FTCA administrative exhaustion requirements.

FTCA claims involve an administrative process in which notice is presented to a federal agency, then a separate complaint (lawsuit) is filed in federal court if the agency fails to resolve the claim administratively.

According to the FTCA, notices must be written and directed to the appropriate federal agency that the claimant asserts is responsible for wrongdoing. U.S.C. § 2675(a). The notice must provide the agency with sufficient information so it can carry out an investigation to ascertain its potential liability. The usual form of notice is Standard Form 95 (SF-95), but claimants are not required to use that form.

The written notice does not have to assert all elements of the cause of action (i.e., all of the legal requirements for stating a claim), but a claimant’s suit may be brought only on those facts and theories of liability raised in the administrative notice. See: *Williams v. United States*, 932 F.Supp. 357 (D.D.C. 1996). In other words, a claimant should err on the side of caution by including all facts and supporting information in the notice, to avoid possible dismissal of the complaint if the agency fails to settle the matter administratively. See: *Bembenista v. United States*, 866 F.2d 493 (D.C. Cir. 1989).

Claimants also must request a sum certain, and their potential for recovery will be limited to no more than the amount requested. 28 C.F.R. § 14.2(a). “Failure to have specified a sum certain at the administrative stage is a defect that deprives the court of subject matter jurisdiction over the action.” See: *Ahmed v. United States*, 30 F.2d 514 (4<sup>th</sup> Cir. 1994); *Kokotis v. U.S. Postal Service*, 223 F.3d 275 (4<sup>th</sup> Cir. 2000);

28 U.S.C. § 2675(b). A sum certain means a specified dollar amount.

Claimants under the FTCA must sign their notices or have them signed by their attorneys or legal representatives. If someone signs in their representative capacity, “evidence of the representative’s authority to sign ... must be shown.” 28 C.F.R. § 14.3(e); *Kanar v. United States*, 118 F.3d 527 (11<sup>th</sup> Cir. 1997). For example, if the representative has a prisoner’s power of attorney, a copy of the notarized power of attorney should be submitted with the notice. Failure to do so may result in dismissal of the claim, though some circuits are split on that issue.

The claimant must present written notice of the claim to the correct federal agency, such as on SF-95, and obtain proof that it was presented. 28 U.S.C. § 2675(a). Written notice is effective on the date it is received by the agency, not the date of mailing. 28 C.F.R. § 14.2(a). The claimant should attempt to ascertain the correct agency whose employees’ acts or omissions were the proximate cause of his injuries, and submit the notice to that agency. However, if the claimant inadvertently notices the wrong agency, the agency that received the notice “must transfer the claim forthwith to the appropriate agency and notify the claimant of the transfer.” 28 C.F.R. § 14.2(b)(1).

Further, the claimant bears the burden of presenting written notice of his claim prior to the expiration of the statute of limitations. FTCA claims will be barred if they are not presented in writing to the correct federal agency within two years of the accrual of the claimant’s cause of action. 28 U.S.C. § 2401(b).

After the presentation of notice of the claim, the claimant cannot file an FTCA complaint in federal court until the agency receiving the notice has had the claim for six months, and the federal court lacks subject matter jurisdiction until the six-month period has expired or the agency has issued a final denial of the claim. See: *McNeil v. United States*, 113 S.Ct. 1980 (1993). If the agency denies the claim, the claimant must file a complaint in federal court within six months of the date of the denial.

With respect to venue for filing FTCA



complaints, the proper venue is the district where the claimant resides or where the act or omission occurred. 28 U.S.C. § 1402(b). The substantive law of the state in which the act or omission occurred is the controlling authority for FTCA claims, and the government's liability is "in the same manner and to the same extent as a private individual under like circumstances...." 28 U.S.C. § 1346(b), 28 U.S.C. § 2674. In some cases, state law presuit notice or expert report requirements may apply, such as in medical malpractice or negligence cases.

If state law does not permit recovery for certain types of tort claims, an FTCA complaint filed in that jurisdiction likewise will be barred from recovery. Further, South Carolina attorney Joe Griffith has noted that district courts are increasingly enforcing state-imposed damages caps in FTCA cases.

When filing an FTCA complaint, the complaint and summons are served on both the Attorney General in Washington, D.C. and the U.S. Attorney's Office for the district in which the lawsuit is filed.

FTCA trials are held before a district court judge, not a jury; relief may only take the form of monetary damages, and equitable relief is not available. Damages may not exceed the sum certain specified in the administrative claim unless "the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the federal agency." See: 28 U.S.C. § 2675(b); *Cole v. United States*, 861 F.2d 1261 (11<sup>th</sup> Cir. 1988). Punitive damages and prejudgment interest are not allowable under the FTCA. 28 U.S.C. § 2674.

The United States – not federal departments, agencies or individual employees – is the only proper defendant in an FTCA claim. 28 U.S.C. § 2679. The alleged tortfeasor must be a federal employee acting within the course and scope of his or her federal employment, and must not be an independent contractor. 28 U.S.C. § 1346(b) (1), 2675, 2672, 2679 and 2671. Thus, for example, federal prisoners held at a facility operated by a private contractor, such as CCA or GEO Group, cannot file an FTCA claim against the company or its employees, as they are not federal employees.

The Supreme Court has held that a suit against the United States under the FTCA is the exclusive remedy for claims arising from medical treatment and related func-

tions provided by Public Health Service (PHS) employees acting within the scope of their employment. See: *Hui v. Castaneda*, 559 U.S. 799 (2010) [*PLN*, Oct. 2010, p.44]. PHS employees provide medical care in some Bureau of Prisons and immigration detention facilities.

Further, compensation from the Federal Prison Industries Fund (18 U.S.C. § 4126) is the exclusive source of compensation available for an injury sustained by a prisoner in connection with work activities at a federal prison. See: *Vander v. U.S. Dept. of Justice*, 268 F.3d 661 (9<sup>th</sup> Cir. 2001).

FTCA claims concerning government policy decisions are barred by the discretionary function exception – i.e., acts or omissions of federal employees related to a "discretionary function or duty" – as are certain intentional torts. In general, only claims of negligence are covered by the FTCA rather than intentional misconduct. The discretionary function exception applies even when decisions are intentionally or negligently made, or the discretion is abused. See: *United States v. Gaubert*, 499 U.S. 315 (1991).

However, the intentional acts or omissions of an "investigative or law enforcement officer," including but not limited to assault, battery, false arrest, false imprisonment, abuse of process and malicious prosecution, are covered by the FTCA and may proceed. 28 U.S.C. § 2680(h); *Millbrook v. United States*, 133 S.Ct. 1441 (2013) (involving FTCA claims against Bureau of Prisons employees) [*PLN*, June 2013, p.28].

Lastly, attorneys are prohibited from receiving fees in FTCA cases that exceed 20% of an administrative settlement or 25% of a judgment or compromise settlement after a complaint is filed. 28 U.S.C. § 2678. ■

*Editor's Note:* This article provides a brief introduction to the FTCA and FTCA claims. As the law is constantly changing, claimants who plan to file FTCA claims or complaints should research the most recent case law related to such actions. Special thanks to attorney John Boston for reviewing this article.

Sources: "The Basics of the Federal Tort Claims Act," by Joseph P. Griffith, Esq. ([www.joegriffith.com](http://www.joegriffith.com)); [www.usphs.gov](http://www.usphs.gov); [www.justice.org](http://www.justice.org); [www.nolo.com](http://www.nolo.com); [www.washingtonpost.com](http://www.washingtonpost.com)

 **NOLO**



## Nolo's Plain-English Law Dictionary

\$29.99

Order from

### Prison Legal News

P.O. Box 1151

Lake Worth, FL 33460

561-360-2523

Add \$6 shipping for orders under \$50

[www.prisonlegalnews.org](http://www.prisonlegalnews.org)



## Save on Prescription Eyeglasses & Shades

Send for a **FREE** Catalog  
Money Back Guarantee

**Prism Optical, Inc.**  
10954 NW 7th Ave  
Dept: LN0314  
Miami, FL 33168

Inquiries from Friends  
and Family Welcome  
1-800-637-4104

[www.prismoptical.com](http://www.prismoptical.com)  
[contact@prismoptical.com](mailto:contact@prismoptical.com)



# Psst! Hey Man, Need Some Execution Drugs?

**O**FFICIALS IN DELAWARE AND 31 OTHER states that use lethal injection to execute prisoners are scrambling to find new drugs to carry out death sentences, and in some cases are procuring them through secret exchanges and confidential deals – and from questionable sources.

Emails obtained by the Associated Press (AP) revealed how the head of Delaware's Department of Correction enlisted a drugstore owner-turned-bureaucrat to acquire pentobarbital, the sedative component of the state's new three-drug execution protocol since production of sodium thiopental ceased in the U.S. in early 2011. [See: *PLN*, June 2011, p.1].

Delaware DOC Commissioner Carl Danberg reached out to Alan Levin, the state's economic development director, knowing that Levin used to own the Happy Harry's drugstore chain, which he sold in 2006 before becoming a state official. Aware that Levin had spent more than a decade cultivating connections in the pharmaceutical industry, Danberg asked him to make a few calls.

According to the emails obtained by the AP, in May 2011, Levin contacted Mike Kaufmann, CEO of the pharmaceutical division of Cardinal Health, one of the largest wholesale distributors of prescription drugs in the United States.

"While I know this is a bit of a political issue, since Cardinal is not located in Delaware, I believed it may be easier for Cardinal to do this," Levin wrote to Kaufmann. "Is [pentobarbital] something that Cardinal would be interested in selling to the state of Delaware? If not, do you have any recommendations who else we can pursue?"

Once Levin hooked up Danberg with his connection at Cardinal, "things fell into place," Danberg told the AP.

Officials said the drugs that Cardinal shipped to the Delaware DOC in June 2011 – including pentobarbital, pancuronium bromide and potassium chloride – were enough to last for several executions, beginning with Shannon Johnson, a convicted murderer who was put to death by lethal injection in April 2012.

Levin told the AP that he was "happy to help facilitate" the process of acquiring the drugs, but that he, Danberg and other state officials worked hard to conceal the process so as not to jeopardize the possibil-

ity of getting more drugs in the future.

"I did not want it getting outside the smallest number of people as possible how we were pursuing the chemicals because I wanted to make sure we had a supply of the chemicals first," Danberg said, candidly. "I did not want the supplier of the chemicals to go public, to be publicly known, simply because I did not want that source to dry up."

Executions in many states have been halted or postponed due to concerns that replacement execution drugs do not meet the constitutional prohibition against cruel and unusual punishment, as they may result in pain and suffering. In addition, death row prisoners and advocacy groups have filed a flurry of lawsuits stemming from states' efforts to find alternative sources for the drugs.

Some states have turned to compounding pharmacies to obtain execution drugs that are no longer available from manufacturers. Compounding pharmacies typically custom blend small amounts of specific drugs, but are not regulated by the federal government and the safety or effectiveness of the drugs is not verified by the U.S. Food and Drug Administration. A compounding pharmacy in Massachusetts was linked to an outbreak of fungal meningitis in October 2012 that resulted in over 60 deaths due to contaminated medication.

Three death row prisoners in Texas, the state with the highest number of executions, are challenging the state's plan to use a drug obtained from a compounding pharmacy.

"Use of compounded pentobarbital would constitute a significant change in the lethal injection protocol, a change that adds an unacceptable risk of pain, suffering and harm to the plaintiffs if and when they are executed," their lawsuit contends.

Medical experts note that compounded drugs carry a high risk of contamination and could subject prisoners to excruciating pain, which one expert compared to rubbing sandpaper on an open wound.

Further, a separate civil complaint filed in federal court in October 2013 alleges that officials with the Texas Department of Criminal Justice (TDCJ) submitted falsified prescriptions for pentobarbital to Woodlands Pharmacy, a compounding pharmacy in Houston, and used an individual employee's credit card to buy the drug instead of a state purchasing order.

Prison officials had previously tried to obtain pentobarbital using the name of the "Huntsville Unit Hospital," even though the Huntsville Unit, which houses the state's execution chamber, hasn't had a functional hospital for more than two decades.

"We believe that TDCJ's purchase of compounded pentobarbital from Woodlands Pharmacy violates numerous state laws," said Maurie Levin, one of the attorneys representing death row prisoners in the lawsuit. "The vast majority of compounded drugs can only be mixed or sold pursuant to a doctor's prescription. TDCJ did not get a prescription for its purchase of compounded drugs. There are exceptions to the requirement, but TDCJ's purchase does not qualify for any of them."

The pharmacy demanded that state officials return the pentobarbital, but they refused.

"The states are scrambling to find the drugs," noted Richard Dieter, who heads the Death Penalty Information Center. "They want to carry out these executions that they have scheduled, but they don't have the drugs and they're changing and trying new procedures never used before in the history of executions."

As a result, unpredictable things can happen with new, largely untested lethal injection drugs. One example was the October 15, 2013 execution of Florida prisoner William Hays, who was put to death for the 1986 rape and murder of 21-year-old Angela Crowley. Hays was injected with the sedative midazolam hydrochloride, the first-ever use of that drug to execute a prisoner in the United States. The drug, known commercially as Versed, was part of a three-drug protocol.

According to the Associated Press, Hays' execution lasted twice as long as it would have had pentobarbital been used; it took 16 minutes before Hays was declared dead, and he "remained conscious longer and made more body movements after losing consciousness than other people executed recently by lethal injection."

The execution prompted seven Florida death row prisoners to file a federal lawsuit challenging the "Midazolam Protocol" used by the Florida Department of Corrections.

"We don't even know if the new drug

[midazolam] is working or not,” said Dieter. “Everything is a bit of an experiment with a human subject. If this were ordinary medicine, that would not be allowed, but this is the death penalty and that’s how it goes.”

As another example, when Michael Lee Wilson, 38, was executed in Oklahoma on January 9, 2014 by lethal injection, which included pentobarbital and a combination of other drugs, his final words were: “I feel my whole body burning.”

In Ohio, the planned November 2013 execution of Ronald Phillips was put on hold due to concerns about the use of a combination of midazolam and hydromorphone, a powerful painkiller.

“We really don’t know what the effect of using this drug cocktail will be, and that’s the really scary thing,” said Mike Brickner of the American Civil Liberties Union of Ohio. “What we are proposing is basically experimenting on human beings.”

This was the third time Ohio prison officials had changed their lethal injection drugs since 2009; previously, the state had used sodium thiopental and then pentobarbital when the former drug was no longer available.

“We don’t know how these drugs are going to react because they’ve never been used to kill someone,” said Fordham University law professor Deborah Denno, an expert on lethal injections. “It’s like when you wonder what you’re going to be eating tonight and you go home and root through your refrigerator to see what’s there. That’s what these departments of corrections are doing with these drugs.”

“You’re basically relying on the toxic side effects to kill people while guessing at what levels that occurs,” explained Professor Jonathan Groner at the Ohio State University College of Medicine. He said there are no guidelines for giving a lethal dose of hydromorphone because the drug is not designed to kill. An overdose could cause the prisoner to experience symptoms such as an extreme burning sensation, muscle pain or spasms, seizures, hallucination and vomiting, Groner said.

Ohio prisoner Dennis McGuire, 53, was executed on January 16, 2014 with an injection of midazolam and hydromorphone. According to news reports it took McGuire around 25 minutes to die; he struggled to breathe, tensed his body and made snorting sounds. His family has since filed a lawsuit in federal court over

his prolonged death, while prison officials claimed that McGuire’s attorney coached him to fake that he was suffocating during the execution.

Hospira, Inc., the manufacturer that produces midazolam and hydromorphone, announced in February 2014 that it opposes using the drugs in lethal injections. “Hospira makes its products to enhance and save the lives of the patients we serve, and, therefore, we have always publicly objected to the use of any of our products in capital punishment,” the company stated. Ohio prison officials had obtained the drugs produced by Hospira from McKesson, a pharmaceutical distributor based in San Francisco.

Legal challenges have halted scheduled executions in several states, including California, Missouri, Georgia, North Carolina, Pennsylvania and Colorado.

In October 2013, Missouri announced that it would use pentobarbital obtained from a compounding pharmacy. That announcement followed the Missouri DOC’s decision to return vials of propofol it had planned to use for lethal injections to Morris & Dickson, the company that had supplied the drug. Morris & Dickson had sold the propofol to the DOC in violation of its agreement with the German manufacturer, Fresenius Kabi, which prohibits the drug’s use in executions.

At least one execution in Missouri was postponed pending the switch to pentobarbital, and in February 2014 a compounding pharmacy in Oklahoma, the Apothecary Shoppe, agreed to not sell the drug to the Missouri DOC. Previously, prison officials had paid the pharmacy \$8,000 in cash for each dose of pentobarbital.

California abandoned plans to use a three-drug execution protocol in July 2013, and instead indicated it would use a single-drug method. The state has not had an execution since 2006, largely due to legal challenges to its lethal injection procedures.

Oklahoma prison officials reportedly used petty cash accounts to buy lethal injection drugs, including an account used to purchase bus tickets for released prisoners, in order to minimize the paper trail and avoid identifying the supplier of the drugs. Other states likewise have tried to prevent the disclosure of their sources for obtaining execution drugs.

“There is absolute chaos among the

states,” said Professor Denno. “So, every few months it seems we see a different state using a different type of drug, or types of drugs.”

“Recent restrictions imposed by pharmaceutical companies and the Food and Drug Administration make procuring these drugs challenging. We must ensure that individuals facing the death penalty are afforded certain guaranteed rights of due process before a state proceeds with an execution,” stated Colorado Governor John Hickenlooper.

The Denmark-based drug manufacturer Lundbeck, which holds the sole license to produce pentobarbital for the United States, told prison officials as early as January 2011 that the drug was not intended for lethal injections and asked for its use in executions to cease.

Many states then turned to propofol instead, but the European Union, which opposes the death penalty, threatened to restrict shipments of the drug to the U.S. if it was used in executions. Propofol is a common anesthetic widely used by hospitals, and import restrictions would potentially impact patient health and safety.

“Our system is completely broken, and I don’t know how to say it more bluntly than that,” said Arkansas Attorney General Dustin McDaniell. “It’s a complete impossibility. I can no more flap my arms and fly across the state than I can carry out an execution.”

Some states have considered abandoning lethal injection and returning to more traditional forms of capital punishment. For example, a bill to permit firing squads was introduced in Wyoming, though the state senate voted on February 11, 2014 not to consider the legislation. A similar bill has been introduced in Missouri, while lawmakers in several other states, including Virginia, Louisiana and Tennessee, have proposed reinstating the use of the electric chair. ■

Sources: *Associated Press*, [www.delawareonline.com](http://www.delawareonline.com), [www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org), [www.allgov.com](http://www.allgov.com), [www.correctionsone.com](http://www.correctionsone.com), [www.correctionalnews.com](http://www.correctionalnews.com), [www.motherjones.com](http://www.motherjones.com), *The Gainesville Sun*, *New York Times*, *CNN*, *National Journal*, *Los Angeles Times*, *KUOW Radio*, *The Raleigh News & Observer*, [www.cleveland.com](http://www.cleveland.com), *TIME*, [www.abcnews.go.com](http://www.abcnews.go.com), [www.mercurynews.com](http://www.mercurynews.com), *Washington Post*, [www.nola.com](http://www.nola.com)

# A Rare Look Inside the Maine State Prison's "Supermax"

## *An almost-clean version of hell*

by Lance Tapley

THERE WAS A STAIN OF WHAT LOOKED like blood on the floor of the otherwise shiny-clean, empty Mental Health Unit isolation cell. "It's Kool-Aid," said my minder, a deputy warden. He smiled. But, as the saying goes, I hadn't drunk the Kool-Aid.

The cell faintly stank of shit. Mentally ill prisoners and those made mentally ill by prolonged solitary confinement are driven to cut themselves and to try to throw their feces at guards.

In one of the Administrative Segregation cellblocks – pure solitary confinement – I heard undulating cries and saw shadowy faces behind the steel doors' tiny windows.

The Maine State Prison "supermax," or Special Management Unit, is an ugly place. Are my photos ugly enough? Trying to fit form to content, I used an old film camera and grainy-image-producing 400-speed, black-and-white film shot usually without a flash under fluorescent lights. There were big limitations. I was not supposed to photograph prisoners, and my tour was rapid. That said, I was, possibly, the first journalist to visit and photograph the supermax – after eight years of writing about it.

Super-harsh supermax (super-maximum-security) prisons and their central feature of solitary confinement became a correctional craze 30 years ago. They became dumping grounds for the mentally ill and others who couldn't follow prison rules or who simply irritated guards. At least 80,000 human beings are held in them nationwide. Maine opened its supermax in the coastal town of Warren in 1992. Ten years later it built the new state prison around it.

The supermax's unforgiving conditions are not helpful, to put it mildly, in improving prisoner behavior. The evidence is overwhelming, in fact, that protracted solitary confinement damages or destroys prisoners' minds. Human rights groups consider it torture. And it costs taxpayers twice as much as "general population" incarceration.

Maine corrections commissioner Jo-

seph Ponte has reduced the typical number of prisoners in isolation from close to 100 to 40 or so in a 900-man prison. Of the supermax's four cellblocks or "pods," two, of Administrative Segregation, have 50 cells each, and one is now empty. The Mental Health Unit, where solitary confinement has never been total, has two pods of 16 cells each, one for "acute" prisoners, one for "stabilization." Together they held 17 men the day I was there.

Stays in the supermax also are much shorter now, and there's a lot less prisoner "cutting up" and fewer brutal cell "extractions" by guards to tie prisoners into the restraint chair. For his reforms, Ponte has deservedly received national attention, helping fuel a still-weak movement to limit solitary confinement.

But the Maine supermax is still there, and it's still grim. While 40 prisoners may not sound like many, it's the total, according to one report, that England and Wales, with 56 million inhabitants, keep in isolation – isolation less severe than in American supermaxes.

And the supermax is part of a prison from which I receive constant reports of guard cruelty, inadequate medical care, understaffing, deliberate mixing of predators and the vulnerable, and – currently – turmoil because scores more men are being forced to double-bunk. Corrections says the double-bunking is being done for proper "classification" of prisoners. Critics suspect it's being done to save money.

It's hard to uncover the truth of what goes on in prisons. Prisoners are always unhappy, prisons are rumor mills and corrections officials are tight-lipped. But the reports I get are consistent.

I wasn't supposed to interview prisoners, but in the Mental Health Unit a short, meek-looking prisoner, James Brensinger, handed me a typed essay describing his incessant cutting up (he showed me deep scars on his arms), suicide attempts, hallucinations and the medical staff's failure to deal with his condition. It ends: "I am begging someone to please hear my pleas and cries."

In the other part of the unit, seven prisoners, some seemingly heavily doped, watched a TV high on a wall. I asked an alert young man how prisoners occupied themselves there. He silently pointed to the TV. Then, he remarked, referring to the cellblock: "Our mental health unit without mental health."

Here – to the supermax's Mental Health Unit – is where Republican Governor Paul LePage and the Democratic legislature recently decided to send violence-prone patients from the state's chief psychiatric hospital, Riverview, in Augusta. Unconvicted jail prisoners whom the courts have concluded should be examined for their sanity – people presumably innocent until proven guilty – will also be sent to this prison unit. Twenty more cells will be opened.

There's individual insanity, and there's social insanity. The writer Hannah Arendt famously coined the phrase "the banality of evil" to describe Nazi bureaucrat Adolf Eichmann, a "normal" man who sat at his desk and calmly signed papers that sent millions of Jews to their death.

The Maine State Prison's supermax, with its polished floors only a little stained with blood and, while I was there, with its tranquility only occasionally interrupted by a prisoner's muffled cries, is, to me, a physical manifestation of the banality of evil. "A clean version of hell," as a former prison warden described another supermax.

To be more compassionate toward its creators, however – to be less like those who defend this uniquely American form of mass torture – I should discard a word like "evil" and describe the supermax as a manifestation of social insanity, of a sick society.

"It's just crazy, this whole place," the young man in the Mental Health Unit told me. ■

*This article was originally published by The Portland Phoenix (<http://portland.theportlandphoenix.com>) on November 8, 2013; it is reprinted with permission of the author.*





Stay in touch with a good Magazine!

Get 5 Full One Year Subscriptions - **ONLY \$20!**

+ \$3.99 p/h  
"BEST DEAL ON THE POUND!"

Check your **5** magazines  
and underline three backup choices (in case of unavailability)

- |                                                             |                                                            |                                                        |
|-------------------------------------------------------------|------------------------------------------------------------|--------------------------------------------------------|
| <input type="checkbox"/> 4 WHEEL DRIVE & SPORT UTILITY (12) | <input type="checkbox"/> FLEX (12)                         | <input type="checkbox"/> PLANE & PILOT (12) NR*        |
| <input type="checkbox"/> ALLURE (12)                        | <input type="checkbox"/> FLORIDA SPORT FISHING (6)         | <input type="checkbox"/> POPULAR PHOTOGRAPHY (12)      |
| <input type="checkbox"/> AMERICAN PHOTO (6)                 | <input type="checkbox"/> FLYING (12)                       | <input type="checkbox"/> POPULAR SCIENCE (12)          |
| <input type="checkbox"/> ARTHRITIS TODAY (6)                | <input type="checkbox"/> FOUR WHEEL & OFF ROAD (12)        | <input type="checkbox"/> PREDATOR EXTREME (6)          |
| <input type="checkbox"/> AUTOMOBILE (12)                    | <input type="checkbox"/> FOUR WHEELER (12)                 | <input type="checkbox"/> PREVENTION (12)               |
| <input type="checkbox"/> BACKPACKER (9)                     | <input type="checkbox"/> FREESKIER (6)                     | <input type="checkbox"/> RED BULLETIN MAGAZINE (12)    |
| <input type="checkbox"/> BETTER HOMES & GARDENS (12)        | <input type="checkbox"/> GLAMOUR (12)                      | <input type="checkbox"/> REDBOOK (12)                  |
| <input type="checkbox"/> BICYCLING (11)                     | <input type="checkbox"/> GOLF DIGEST (12)                  | <input type="checkbox"/> ROAD & TRACK (10)             |
| <input type="checkbox"/> BLACK ENTERPRISE (12)              | <input type="checkbox"/> GOLF TIPS (7)                     | <input type="checkbox"/> SAVEUR (9)                    |
| <input type="checkbox"/> BOATING (10)                       | <input type="checkbox"/> GOLFWEEK (40)                     | <input type="checkbox"/> PARENT & CHILD (8)            |
| <input type="checkbox"/> BON APPETIT (12)                   | <input type="checkbox"/> HARPERS BAZAAR (10)               | <input type="checkbox"/> SELF (12)                     |
| <input type="checkbox"/> BOWHUNT AMERICA (6)                | <input type="checkbox"/> HOT BIKE (12)                     | <input type="checkbox"/> SEVENTEEN (10)                |
| <input type="checkbox"/> BOWHUNTING WORLD (9)               | <input type="checkbox"/> HOT ROD (12)                      | <input type="checkbox"/> SHAPE (12)                    |
| <input type="checkbox"/> BRIDAL GUIDE (6)                   | <input type="checkbox"/> HOUR DETROIT (12)                 | <input type="checkbox"/> SIEMPRE MUJER (6)             |
| <input type="checkbox"/> CABELA'S OUTFITTER JOURNAL (6)     | <input type="checkbox"/> HOUSE BEAUTIFUL (10)              | <input type="checkbox"/> SKI MAGAZINE (6)              |
| <input type="checkbox"/> CAR & DRIVER (12)                  | <input type="checkbox"/> INC (12)                          | <input type="checkbox"/> SLAM (10)                     |
| <input type="checkbox"/> CAR CRAFT (12)                     | <input type="checkbox"/> INSTRUCTOR K - 8 (6)              | <input type="checkbox"/> SNOWBOARD (4)                 |
| <input type="checkbox"/> CBS WATCH! MAGAZINE (6)            | <input type="checkbox"/> ISLANDS MAGAZINE (8)              | <input type="checkbox"/> SNOWBOARDER (6)               |
| <input type="checkbox"/> CHARISMA (12)                      | <input type="checkbox"/> JET (20)                          | <input type="checkbox"/> SPORT RIDER (10)              |
| <input type="checkbox"/> CHEVY HIGH PERFORMANCE (12)        | <input type="checkbox"/> LADIES HOME JOURNAL (10)          | <input type="checkbox"/> SUPER CHEVY (12)              |
| <input type="checkbox"/> CIRCLE TRACK (12)                  | <input type="checkbox"/> LATINA (10)                       | <input type="checkbox"/> SURFER (12)                   |
| <input type="checkbox"/> COMPLEX MAGAZINE (6)               | <input type="checkbox"/> LOG HOME LIVING (9)               | <input type="checkbox"/> TAMPA BAY MAGAZINE (6)        |
| <input type="checkbox"/> CONDE NAST TRAVELER (12)           | <input type="checkbox"/> LUCKY (10)                        | <input type="checkbox"/> TEEN VOGUE (10)               |
| <input type="checkbox"/> CRUISING WORLD (12)                | <input type="checkbox"/> MARIE CLAIRE (12)                 | <input type="checkbox"/> TENNIS (6)                    |
| <input type="checkbox"/> CYCLE WORLD (12)                   | <input type="checkbox"/> MEN'S FITNESS (10)                | <input type="checkbox"/> THE ATLANTIC MONTHLY (10)     |
| <input type="checkbox"/> DETAILS - FASHION (10)             | <input type="checkbox"/> MEN'S JOURNAL (12)                | <input type="checkbox"/> TIMBER HOME LIVING (6)        |
| <input type="checkbox"/> DETROIT HOME (6)                   | <input type="checkbox"/> MIDWEST LIVING (6)                | <input type="checkbox"/> TRANSWORLD MOTOCROSS (12)     |
| <input type="checkbox"/> DIGITAL PHOTO (7)                  | <input type="checkbox"/> MINISTRY TODAY (6)                | <input type="checkbox"/> TRANSWORLD SKATEBOARDING (12) |
| <input type="checkbox"/> DIRT RIDER (12)                    | <input type="checkbox"/> MORE (10)                         | <input type="checkbox"/> TRANSWORLD SNOWBOARDING (8)   |
| <input type="checkbox"/> EBONY (11)                         | <input type="checkbox"/> MOTOR TREND (12)                  | <input type="checkbox"/> TRUCKIN (13)                  |
| <input type="checkbox"/> ELLE DECOR (10)                    | <input type="checkbox"/> MOTORCYCLIST (12)                 | <input type="checkbox"/> UPTOWN (6)                    |
| <input type="checkbox"/> ENTREPRENEUR (12)                  | <input type="checkbox"/> MUSCLE & FITNESS (12)             | <input type="checkbox"/> UPTOWN MAGAZINE (6)           |
| <input type="checkbox"/> ESPN MAGAZINE (26)                 | <input type="checkbox"/> MUSCLE MUSTANGS & FAST FORDS (12) | <input type="checkbox"/> W MAGAZINE (10)               |
| <input type="checkbox"/> ESQUIRE (11)                       | <input type="checkbox"/> NYLON GUYS (6)                    | <input type="checkbox"/> WATERFOWL & RETRIEVER (2)     |
| <input type="checkbox"/> EVERY DAY WITH RACHAEL RAY (10)    | <input type="checkbox"/> NYLON MAGAZINE (10)               | <input type="checkbox"/> WEIGHT WATCHERS (6)           |
| <input type="checkbox"/> FAMILY CIRCLE (12)                 | <input type="checkbox"/> OLD HOUSE JOURNAL (6)             | <input type="checkbox"/> WHITETAIL JOURNAL (6)         |
| <input type="checkbox"/> FAMILY FUN (10)                    | <input type="checkbox"/> OUTDOOR LIFE (12)                 | <input type="checkbox"/> WIRED (12)                    |
| <input type="checkbox"/> FAST COMPANY (10)                  | <input type="checkbox"/> OUTDOOR PHOTOGRAPHER (11) NR*     | <input type="checkbox"/> WORKING MOTHER (6)            |
| <input type="checkbox"/> FIELD & STREAM (12)                | <input type="checkbox"/> OUTSIDE (12)                      | <input type="checkbox"/> YOGA JOURNAL (9)              |
| <input type="checkbox"/> FITNESS (10)                       | <input type="checkbox"/> PARENTS (12)                      |                                                        |

Send as many "5 for \$20" orders as you like!

*"Tell your Friends and Families!"*

Send a copy of this page to us. Please make your address as short as possible. **Current customers - Please update your address!**  
Allow 6-8 weeks for delivery. Pay by check, money order or **order online** and use credit card or PayPal.

Name and Inmate # (please print, maximum 24 characters):													
Address:													
City:						State:				Zip:			

\* No Renewal



**Inmate Magazine Service**

P.O. Box 2063, Fort Walton Beach, FL 32549 [www.InmateMagazineService.com](http://www.InmateMagazineService.com)

OK to Copy!

# Video Visitation a Growing Trend, but Concerns Remain

**A**GROWING TREND TOWARD THE USE of video visitation at jails across the country is drawing the praise of corrections officials and prisoners' family members alike, though some advocacy groups worry that video visits could pose an undue financial hardship on those least able to afford it and possibly lead to the elimination of in-person visits.

"I think it's the way of the future," said Kane County, Illinois police commander Corey Hunger. "In the next 20 years, I think everyone will have it."

At some jails, visitors can use video screens to communicate with prisoners in another part of the facility. Other systems allow people to conduct visits via the Internet from a remote location, including their own homes. Prisoners typically use video monitors set up in cell blocks or other designated areas; the visits are monitored and recorded. [See: *PLN*, July 2013, p.44; Sept. 2012, p.42; Nov. 2011, p.37; Jan. 2010, p.22].

But in Kane County and other jails, the installation of video systems spelled the end of in-person visits. Hunger said not having to screen visitors and escort them through the jail frees up guards to perform other duties. Officials also claim that doing away with face-to-face visits reduces confrontations among prisoners and the risk that visitors will smuggle in contraband.

"[F]rom the standpoint of safety and security, it's a huge improvement," stated St. Clair County, Illinois Sheriff Rick Watson. "Every pod has a video monitor and the prisoners don't have to be moved for visits, which saves on staff time. And if you cut down on movement of prisoners, you cut down on dangerous incidents."

Eliminating face-to-face visits worries some prisoner advocacy groups.

"It's a fundamental right to have meaningful visits with loved ones," said John Maki, executive director of the John Howard Association of Illinois, a Chicago-based organization. "If it's to supplement in-person visits, that's great. I think the danger in video visitation is using it to replace in-person visits," he added.

"I hate not being able to see him face-to-face when I come to the jail," stated Sherry McCullough, whose son is incarcerated at the St. Clair County Jail. "I want to get a good look at him, to tell him

to stand up and turn around so I can see that he's getting enough to eat and that he hasn't been hurt. Instead, I have to see his cellmates marching around behind him in their underwear."

However, other family members have complained about problems with in-person visits, including long wait times, searches and non-contact visits conducted through a window using telephones.

"A lot of times you're trying to talk to your loved one and the phone on their end doesn't work," said Marilyn Murphy. "I don't like it. I like it when you can physically see them," she added. However, Murphy said visiting her son remotely through a home computer would be welcome. "To sit in the privacy of your home and visit a loved one?" she said. "Oh, yes."

Critics complain that video visits are sometimes used to financially exploit prisoners and their families, and that service providers often return a percentage of the video visitation fees to correctional facilities.

Paul Wright, director of the Human Rights Defense Center, the parent organization of *Prison Legal News*, described the practice as a kickback. "They're using this as another revenue stream from people who have the least ability to do anything about it," he said, comparing it to the "commission" model prevalent in the prison phone industry. [See: *PLN*, Dec. 2013, p.1]. He also noted that online video conferencing for non-prisoners, such as Skype, is usually free.

The largest provider of video visits, Securus, charges \$1.00 per minute for the service. Securus CEO Richard Smith said the company anticipates adding another 100 video visitation sites by the end of 2014. According to the company's website, Securus already provides phone service to about 2,200 correctional facilities housing more than 850,000 prisoners in 45 states, as well as 81 video visitation systems.

Global Tel\*Link, the nation's largest provider of phone services in prisons and jails, also offers video visitation – which is typically fee-based, with prisoners' families paying the cost of the visits.

For example, the Del Valle jail in Travis County, Texas ended in-person visitation in 2013 except for attorney visits. Instead, Securus installed a video system and charges

a \$20 fee for a 20-minute visit. The county gets a \$4.60 cut from each fee.

At the Lake County, Illinois jail, a 30-minute video visit costs \$25.95 and the county receives 20% of the revenue generated from visitation fees. The Shawnee County Jail in Kansas eliminated in-person visits in January 2014 and now charges \$20 for a 20-minute video visit. Other jails that have recently adopted video visitation, charging fees that typically range from \$.40 to \$1.00 per minute, include those in Alachua County, Florida; Hamilton County, Tennessee; Cumberland County, New Jersey; Chippewa County, Wisconsin; and Maricopa County, Arizona.

While the cost of video visitation may seem steep, when prisoners' family members can visit over the Internet from their homes it eliminates the time and expense of traveling to the jail, plus allows them to accommodate work or school schedules.

The non-profit Prison Policy Initiative has urged the Federal Communications Commission (FCC) to regulate the fees for video visits in the same way it has regulated prison phone rates. The Massachusetts-based organization warned in a December 20, 2013 comment filed with the FCC that video visitation fees shared with corrections officials provide "perverse incentives" to eliminate in-person visits.

"The bottom line is that prison visits are a basic right that needs to be disconnected from a profit motive, both for private companies and the jails," stated John Maki.

Despite such concerns, video visitation has gained support from both jailers and prisoners' family members.

"I liked it because the privacy is better," said Karla Maldonado, who visits her brother at the Cook County jail. "Now you can hear what he's saying."

The Cook County jail complex eliminated in-person visits at a new building following the installation of a \$1 million video visitation system, though face-to-face visits are still allowed in older units at the complex.

All 25 Illinois state prisons are scheduled to begin using video visitation this spring, officials said, with an estimated cost of \$30 per visit. But Illinois Department of Corrections spokesman Tom Shaer stressed the state will not use the system, provided by Global Tel\*Link, as a revenue source.

“Any money that comes to us will be applied to offset our costs,” he noted. “There is no profit motive for us. But we have so many families wishing to do this we may need more staff hours to make the service available.”

Shaer said the state also has no plans to eliminate in-person visits. “I can’t imagine the scenario in which someone would travel to a prison and then wish to communicate through a video screen rather than see a prisoner face-to-face,” he said. “All research shows in-person visits absolutely benefit the mental health of both parties; video can’t match that.”

Certainly, free or reasonably-priced video visitation offered in conjunction with in-person visits can benefit prisoners’ families who must travel long distances or otherwise have difficulty participating in face-to-face visits. But eliminating in-person visits and charging for video visitation is just another way to monetize the corrections system and financially exploit prisoners and their family members.

“With proper regulation and oversight, prison and jail video communication has the potential to offer additional avenues for critical family communication. But if left unregulated, this market could follow the

trajectory of the infamously broken prison telephone industry, dominated by the same corporations,” warned Prison Policy Initiative executive director Peter Wagner. “In that market, companies compete not based on price or service, but rather on who can charge families the most and kick back the largest share of the revenue to the facility that awarded the monopoly contract.”

Sources: *Chicago Tribune*, *South Jersey Times*, *Chicago Sun-Times*, <https://securustech.net>, *St. Louis Post-Dispatch*, *Arizona Republic*, *Phoenix New Times*, [www.wjfb.com](http://www.wjfb.com), [www.cjonline.com](http://www.cjonline.com)

## Online Gaming Accounts of New York Registered Sex Offenders Restricted or Closed

ACCORDING TO NEW YORK ATTORNEY General Eric T. Scheiderman, around 5,600 online gaming accounts belonging to sex offenders registered with the State of New York have been restricted or canceled. Gaming companies Microsoft, Sony, Blizzard, Electronic Arts, Warner Brothers, Disney, Funcom, THQ, Gaia Online, NCSOFT and Apple all cooperated in “Operation: Game Over,” resulting in the closure of sex offenders’ gaming accounts or revocation of their online communications privileges. The move was an initiative of the Entertainment Software Association.

New York requires registered sex offenders to list all of their email addresses, screen names and similar online identifiers in order to limit their access to certain websites such as Facebook. Scheiderman said sexual predators had been using the voice and text chat features in online games to identify and lure potential victims.

“The Internet is the crime scene of the 21st century, and we must ensure that online video game platforms do not become a digital playground for dangerous predators,” he said. “That means doing everything possible to block sex offenders from using gaming systems as a vehicle to prey on underage victims.”

As one example, Richard J. Kretovic, a 19-year-old resident of Monroe County, New York, pleaded guilty to sexually abusing a 12-year-old boy he met online on Xbox Live in 2011. He lured the boy to his house, where the abuse occurred. Kretovic was sentenced to a six-month jail term and

10 years’ probation in May 2012.

The logic of banning registered sex offenders from online gaming forums is hard to understand, though, as it does not affect *unregistered* offenders and will drive sexual predators to open accounts using pseudonyms and anonymous email addresses. Meanwhile, sex offenders who were not

abusing their online gaming account privileges – including those whose offenses did not involve children – are being collectively punished by having their accounts restricted or canceled.

Sources: *New York Times*, *CBS6 Albany*, [www.gamespot.com](http://www.gamespot.com)

## PLRA Does Not Permit Waiver of Court-ordered Answer

AN ILLINOIS FEDERAL DISTRICT COURT has condemned a practice employed by the Illinois Attorney General when representing defendants in lawsuits brought by prisoners. The district court concluded that a motion for leave to waive an answer is unnecessary, and that the assertion of affirmative defenses in a pleading purporting to be a “waiver” of the defendants’ obligation to file an answer is not permitted by statute or rule.

In the case at issue, the defendants’ motion for leave to waive an answer was filed in response to the court’s order that they answer the complaint. The motion relied upon the language of 42 U.S.C. § 1997e(g)(1). The district court noted that that provision of the Prison Litigation Reform Act (PLRA) “allows defendants to conserve resources by waiving their right to reply to potentially frivolous or meritless claims.” It does not require the defendants to request a waiver to file an answer unless ordered to do so by the court upon a finding the claim has a reasonable

chance of prevailing on the merits.

Once a district court orders an answer from the defendants they must comply, and the PLRA does not provide that their answer may deviate from the Federal Rules of Civil Procedure. Moreover, the PLRA states the court may not grant relief to a prisoner-plaintiff until the defendants file an answer, making the answer essential to the litigation.

The district court noted the defendants may generally deny the allegations in a complaint under Rule 8(b)(3), but may not respond by continuing to waive their answer “while simultaneously purporting to plead affirmative defenses.” The defendants’ motion, the court held, failed to comply with its order to answer the complaint.

The district court gave the defendants one week to file an answer and said failure to do so would result in their having “admitted the allegations of the amended complaint.” See: *Boclair v. Hardy*, U.S.D.C. (N.D. Ill.), Case No. 11-cv-05217; 2013 U.S. Dist. LEXIS 14278.

# New Hampshire Prisoners Suspected of Breaching Prison Computer System

**N**EW HAMPSHIRE OFFICIALS ARE INVESTIGATING a suspected “breach” of the Department of Corrections (DOC) computer system at the State Prison for Men in Concord. The investigation began when a staff member noticed a cable linking a computer used by prisoners to a staff computer with access to the DOC’s data system.

“I’m told an inmate, or inmates, were able to hack into the CORIS system,” said Mark Jordan, a former president of the guards’ union. “Once they are in there, they could have access to parole dates, sentencing information, programming schedules for inmates, staff information. And they could change any of that. They could delete [detainer] information from other states.”

The Corrections Information System (CORIS) was installed in 2008 by Abilis New England. “CORIS connects relevant stakeholders through a single electronic offender record and centralized database, thereby providing a holistic view of the offender’s status, history, and risk profile,” a news release stated when CORIS was installed.

When the cable was noticed on August 24, 2012, the DOC called the State Police to assist in the investigation. “It’s a really complex investigation,” said DOC spokesman Jeffrey Lyons. “We don’t know whether any data was compromised. Maybe none was.”

Officials did not have many details about the breach. “We don’t know for certain when it occurred. We don’t know how long ago it may have occurred,” Lyons said. “We don’t know how it occurred.”

He added, “CORIS is password protected and only certain staff have the ability to add to or otherwise change the data that is maintained there. Most other data on the DOC network is password protected and anyone who attempted to access that would be blocked unless they had the appropriate password. Appropriate disciplinary action will be taken when all of the facts are gathered at the conclusion of the investigation.” The breach occurred in an area of the Correctional Industries program, which employs about 200 prisoners in a furniture-making shop, printing shop, license plate shop, woodworking shop and sign-making shop. Prisoner workers in the industries

program use about two dozen computers in a closed network to track contracts and billing.

The investigation includes a forensic computer crimes investigator. According to DOC spokesman Lyons, contacted by *PLN*

on March 4, 2014, “This is still an ongoing investigation that is being handled by the NH State Police Major Crimes Unit.” ■

Sources: *Associated Press, New Hampshire Union Leader*

## Businesses, Members of Congress Not Happy with UNICOR

by Derek Gilna

**W**HEN A POWERFUL U.S. SENATOR takes interest in an issue, even a bureaucratic government agency like the Bureau of Prisons (BOP) pays attention.

Kurt Wilson, an executive with American Apparel, Inc., an Alabama company that makes military uniforms, and Michael Marsh of Kentucky-based Ashland Sales and Service Co., found that out after they learned that UNICOR, which runs prison industry programs for the BOP, was considering bidding on contracts for business that their companies already had. A public statement from U.S. Senator Mitch McConnell, who sits on the Senate Appropriations Committee, led UNICOR to change its mind.

Like many other initiatives of the federal government, UNICOR, formally known as Federal Prison Industries, Inc., started off as well-intentioned. Prisoners earning from \$.23 to \$1.15 an hour are trained to work in factories supervised by BOP staff, where in theory they learn job skills that will help them find employment following their release. However, UNICOR has become not only a job training program but a manufacturing behemoth that employs some 12,300 prisoners and made approximately \$606 million in gross revenue in fiscal year 2012 – yet still reported a net loss of \$28 million. [See: *PLN*, Nov. 2013, p.52].

With that kind of size, purchasing power and cheap prisoner labor, it is almost impossible for small businesses to compete. Indeed, several companies have lost federal contracts due to competition from UNICOR, resulting in job losses among freeworld workers. [See: *PLN*, Feb. 2013, p.42]. This has made some

business owners nervous – and angry.

American Apparel has to compete head-to-head with UNICOR on almost all of its contracts with the federal government, and the company said unfair competition from low-paid prisoner labor forced it to close a plant in May 2012 and lay off 175 workers. “We pay employees \$9 on average,” Wilson stated. “They get full medical insurance, 401(k) plans and paid vacation. Yet we’re competing against a federal program that doesn’t pay any of that.”

Ashland Sales and Service Co. has been making windbreakers for the U.S. Air Force for 14 years, according to Marsh, and competition from UNICOR is endangering 100 jobs at the company, which is the largest employer in Olive Hill, Kentucky. “That’s 100 people buying groceries. We use trucking companies in the town; buy parts and light bulbs there every day. That’s all lost when prisons take away contracts.”

UNICOR has 81 factories in BOP facilities around the country and does far more than supply products and services for prisons and prisoners’ needs. It manufactures goods in six industry categories – clothing and textiles, electronics, fleet and industrial products, office furniture, recycling, and data entry and other services – with clothing being its mainstay.

In the past, legislation gave UNICOR an advantage in obtaining various federal contracts, but the law was amended by Congress from 2002 to 2005, and again through Section 827 of the National Defense Authorization Act of 2008, to limit that preferential advantage.

Kurt Courtney, director of governmental relations at the American Apparel and Footwear Association, said UNICOR



is “a federal program [that is] tanking our industry.... The only way for workers to get jobs back is to go to prison. There’s got to be a better way to do this.”

U.S. Representative Bill Huizenga sponsored a bill in 2011 to do just that – HR 3634, the Prison Industries Competition in Contracting Act. “This is a threat to not just established industries; it’s a threat to emerging industries,” Rep. Huizenga stated at the time. “We know that in the [economic] recovery, many new jobs are coming out of small businesses, and it makes no sense to strangle them in the cradle.”

Manufacturing in America has changed over the decades but UNICOR does not use state-of-the-art manufacturing techniques because it has no need or motivation to do so – even though this means prisoners employed in UNICOR programs don’t receive modern job training that will help them obtain post-release employment.

As for quality, when UNICOR steps outside of its comfort zone and attempts to compete in areas other than prisoner goods and services, it sometimes falls flat. Even though it landed a federal contract to supply helmets for the U.S. military based

upon a preferential bidding process, 44,000 of the helmets were recalled in 2010 due to quality issues. UNICOR then won a no-bid contract the following year to produce body armor to be supplied to Pakistan’s military. [See: *PLN*, Sept. 2011, p.46; Jan. 2011, p.20].

Although the BOP has cited statistics claiming that UNICOR workers have lower recidivism rates, such data has been questioned. In 2013, the Congressional Research Service noted that “... questions about the methodology used in most evaluations of correctional industries means that there is no definitive conclusion about the ability of correctional industries to reduce recidivism.”

John Palatiello, president of the Business Coalition for Fair Competition, said his organization comprised of businesses and taxpayer groups is sympathetic to the BOP’s goals of providing job training to prisoners and reducing recidivism, but that such goals should not be accomplished at the expense of small businesses and their employees who face unfair competition from UNICOR.

HR 3634 failed to pass and was reintro-

duced on May 22, 2013 as HR 2098, which has 15 cosponsors and is currently pending in committee. Among other provisions, the legislation would require UNICOR to compete for its contracts, “minimizing its unfair competition with private sector firms and their non-inmate workers and empowering Federal agencies to get the best value for taxpayers’ dollars.”

HR 2098 would further require UNICOR’s board of directors to, “not later than September 30, 2014, increase the maximum wage rate for inmates performing work for or through Federal Prison Industries to an amount equal to 50 percent of the minimum wage,” and “not later than September 30, 2019, increase such maximum wage rate to an amount equal to such minimum wage.” However, the bill also provides that up to 80% of prisoners’ gross wages may be deducted for taxes, fines, restitution, family support, a savings fund or other purposes. ■

Sources: *www.money.cnn.com*; *www.gov-track.us*; *www.businessinsider.com*; “Federal Prison Industries: Overview and Legislative History,” by Nathan James, *Congressional Research Service* (Jan. 9, 2013)

# INMATE TOLL BUSTERS

## Discount Inmate Telephone Calling Services

*Serving: Federal & State Prisons, County Jails and INS Detention Centers Nationwide*

**FREE Same Day Installation, Only \$1.25 Per Month and 6¢ Per Minute**

## PAY ONLY FOR MINUTES YOU USE

**[www.InmateTollBusters.com](http://www.InmateTollBusters.com)**

**Call 24 Hours: 888-966-8655**

We Send Calls To Cell Phones.  
International Call Services Available.  
Call For Rates. Se Habla Español.



# Ninth Circuit Holds Staff Sexual Abuse Presumed Coercive; State Bears Burden of Rebutting Presumption

THE NINTH CIRCUIT COURT OF APPEALS has held that a district court erred when finding a prisoner could not state an Eighth Amendment sex abuse claim because he “consented” to a relationship with a prison guard.

In 2002, Idaho prisoner Lance Wood and guard Sandra De Martin began a romantic, but not sexual, relationship. Within a few months, however, Wood heard “rumors that Martin had gotten married.” She denied being married but Wood said he wanted to end the relationship.

Shortly thereafter, Martin entered Wood’s cell and “cupped her hand on [his] groin ... enough to excite [him].” Wood pushed her away and said “you need to back off on this.”

Wood again tried to end the relationship but Martin pursued him and subjected him to “aggressive pat searches” on several occasions. Wood went so far as to ask another guard for help, but Martin continued to pursue him.

After Wood ended the relationship, Martin again entered his cell and “grabbed ahold of [his] penis and started to stroke it.”

Martin continued to harass Wood after that incident, but he did not initially report her due to fear of retaliation. Eventually he did report Martin and was transferred to a different prison the next day.

Wood then filed suit in federal court, alleging sexual harassment, retaliation and failure to protect claims. The district court granted summary judgment to the defendant prison officials on Wood’s retaliation claim and his claims that Martin had entered his cell, cupped his groin and stroked his penis.

The district court relied on *Ault v. Freitas*, 109 F.3d 1335 (8th Cir. 1997) to hold that “welcome and voluntary sexual interactions, no matter how inappropriate, cannot as a matter of law constitute ‘pain’ as contemplated by the Eighth Amendment.” Under that standard, the court concluded that Wood could not establish an Eighth Amendment violation.

The Ninth Circuit disagreed, first recognizing the indisputable proposition that a guard’s sexual harassment or abuse of a prisoner violates the Eighth Amendment.

Noting that whether a prisoner can consent to a relationship with a guard was a matter of first impression, the appellate court observed that “because of the enormous power imbalance between prisoners and prison guards, labeling a prisoner’s decision to engage in sexual conduct in prison as ‘consent’ is a dubious proposition.”

The Court of Appeals declined to follow *Ault* because it “utterly failed to recognize the factors which make it inherently difficult to discern consent from coercion in the prison environment.”

While the Ninth Circuit was “concerned about the implications of removing consent as a defense for Eighth Amendment claims,” it found that “allowing consent as a defense may permit courts to ignore the power dynamics between a prisoner and a guard and to characterize the relationship as consensual when coercion is clearly involved.”

Ultimately, the Court of Appeals adopted a bright-line rule which establishes a presumption that alleged sexual misconduct by prison staff is not consensual. While declining to exhaustively define coercive factors, the Court noted that obvious factors include “explicit assertions or manifesta-

tions of non-consent” and “favors, privileges, or any type of exchange for sex.”

The appellate court held that the state bears the burden of rebutting “this presumption by showing that the conduct involved no coercive factors.... Unless the state carries its burden, the prisoner is deemed to have established the fact of non-consent.”

Applying this rule, the Ninth Circuit held Wood had established non-consent for purposes of surviving summary judgment, because his “objective conduct demonstrates non-consent and the state cannot overcome its burden.” See: *Wood v. Beauclair*, 692 F.3d 1041 (9th Cir. 2012).

Following remand, a jury trial was held in December 2012, resulting in a mistrial. On April 8, 2013 the district court denied Wood’s motion to hold the defendants in contempt for “allegedly recording his attorney phone calls, monitoring his attorney visits, and opening and reviewing his legal mail,” finding they had legitimate security reasons for doing so. The court also denied his motion for a protective order and for appointment of counsel. See: *Wood v. Martin*, 2013 U.S. Dist. LEXIS 52305 (D. Idaho 2013). ■

## Lawsuits filed over Oregon Jail Death

THE MOTHER OF A DECEASED PRISONER has sued jail and hospital officials over the death of her son at the Marion County Jail (MCJ) in Salem, Oregon.

On June 14, 2010, Robert Haws was arrested for several criminal offenses and a probation violation, according to court records. He was held at the MCJ pending trial.

A month later, Haws was playing basketball with other prisoners at 9:30 a.m. During an argument, fellow prisoner Robert Dailey punched Haws in the jaw, knocking him unconscious and causing his head to hit the concrete floor. Dailey and the other prisoners fled.

Guards did not witness the altercation or see Haws lying unconscious on the basketball court. Approximately fifteen minutes later, Dailey and a few other prisoners returned to check on him.

They dragged Haws to the edge of

the court and propped him up. He was barely conscious, vomiting and urinating on himself and bleeding from the nose. Unbeknownst to guards, one prisoner made several trips to the laundry room to replace Haws’ bloody clothing.

Guards did not notice Haws on the video monitor until 10:40 a.m. When they finally responded, he was disoriented, unresponsive and exhibiting signs of delusion, according to a federal lawsuit filed by his mother, Diane Bernard. See: *Bernard v. Myers*, U.S.D.C. (D. Ore.), Case No. 11-cv-00608-HZ.

Haws was handcuffed and taken to segregation by wheelchair. Guards later placed him in leg restraints, even as he continued to vomit and bleed from his mouth and nose. Jail officials finally called 911 sometime after 11:15 a.m., and paramedics arrived fifteen minutes later.

“Security officers and medical staff present said that Haws probably had a seizure and conducted no medical exam for evidence of trauma or other causes,” the suit alleged.

A jail nurse told paramedics that Haws may have suffered a seizure, and a guard who rode in the ambulance falsely informed paramedics that Haws had been suicidal two days prior to the incident and “had lots of access to over-the-counter drugs.” His medical history and symptoms did not support those claims, and the possibility of head trauma was never discussed.

Haws finally reached the emergency room at Salem Health about 12:00 p.m. but his condition was not classified as a true emergency. Doctors treated Haws “as if he were an overdose patient despite the rather ample evidence of head trauma,” according to court records.

In a separate state court suit, Bernard alleged that hospital employees were negligent in diagnosing and treating her son. She claimed, for example, that Haws remained chained to a gurney, without a head scan, from noon until evening.

“A critical factor in overall outcome from acute subdural hematoma is the timing of operative intervention,” the lawsuit stated. “Those operated on within four hours of injury may have mortality rates as low as 30 percent. Those operated on after four hours of sustaining the injury have mortality rates around 90 percent.”

“The hospital allowed him to languish for about nine hours in the ER,” said Michelle Burrows, a longtime prisoners’ rights attorney who represents Bernard. “That is somewhat inexplicable by the hospital.”

When an X-ray was finally performed at about 7:00 p.m., it revealed that Haws had a subdural hematoma. He was rushed into emergency brain surgery but emerged five hours later in a coma; he remained on life support for four days and died a week after the surgery.

“Defendants failed to adequately evaluate and diagnose [Haws] by assuming facts not present and treating [him with] less than the standard of care, because [he] was an inmate,” the suit filed by his mother alleged.

When Haws was admitted, hospital staff misidentified him as having come from the Oregon State Penitentiary, according to court documents. While such a mistake may seem innocuous, the evidence suggested

that the lack of adequate care provided to Haws was the result of prisoner bias and mistreatment by hospital staff. A jail nurse admitted during her deposition testimony that she had debated sending Haws to a different hospital because she had “so many long-term concerns with Salem Health and the way they treat prisoners.”

Bernard is suing the hospital and its staff for medical malpractice, wrongful death and civil rights violations for the delay in providing adequate medical care. She said she filed separate actions because she did not want to sue the Marion County Sheriff’s Office in Marion County Circuit Court, and wasn’t sure if a suit against the hospital and staff could be brought in federal court.

A jury trial has been requested in both cases. Unsurprisingly, both hospital spokesman Mark Glyzewski and sheriff’s office spokesman Don Thomson declined to comment, citing the pending litigation.

The case in federal court was remanded to the Marion County Circuit Court in May 2013, where it remains pending with a status hearing scheduled for June 3, 2014. See: *Bernard v. Salem Health*, Marion County Circuit Court (OR), Case No. 12C18741.

Robert Dailey ultimately pleaded guilty to criminally negligent homicide for causing Haws’ death, and was sentenced to five years in prison. ■

Source: *Statesman Journal*

## LET US HELP GET YOU HOME!

D&D Worldwide Services LLC, is an Inmate Service Provider. We create detailed parole plans and provide parole plan documentation services worldwide. We are a team of Christian Professional Consultants with over 14 years’ experience with the prison system. Our services are intended to guide Pro-Se Clients in the “Right Direction” while assisting them during the parole review process. When building your case, we focus on showing the Parole Board a real person, the positive outcome of incarceration, and you to be a favorable candidate for the privilege of parole!

**Full Service (Texas Only)** - Our office will collaborate the details of your case, create into a personalized parole plan with an Interview Request. We will also provide you with the updates of the major occurrences of your file when in review. Services are provided UNTIL an approval is granted or you are released from prison. Effective March 1, 2014 Service fee is \$800.00

**Standard Service (Worldwide)** - Our standard parole plan is approved in ALL STATES where parole is available. Our office will verify your supporters, build your support system, and create into a personalized standard parole plan. Send SASE for a processing form. Effective March 1, 2014 Service fee is \$200.00

*Although the Prison system may only see Prison Numbers...  
We see “Faces” with “Names” with “Loving families” – “We See People”!*

### **D&D Worldwide Services, LLC**

12337 Jones Rd # 408 Houston, TX 77070

P.O. Box 40081; Houston, TX 77240

Office: (281) 580-8844

Website: [www.myparole.info](http://www.myparole.info)

***Se Habla Español.***

## News in Brief

**Arizona:** Two prisoners at the Yavapai County Jail have been sentenced for their involvement in a fraudulent tax refund scheme. James Borboa pleaded guilty and on September 8, 2013 received an additional term of 18.5 years in prison for using other prisoners' IDs to file tax returns for 2010, 2011 and 2012. Justin Eugene Shaw Young, who also participated in the scheme, pleaded guilty in August 2013 and received a mitigated sentence of 6 years. Borboa and Young offered kickbacks of about \$1,000 to each prisoner whose ID was used in the tax scam.

**California:** On August 23, 2013, Robert Eugene Vasquez, 36, was sentenced to life in prison without the possibility of parole for the stabbing death of his neighbor, Bobby Ray Rainwater, Jr. Vasquez had been told by his mother that Rainwater was a child molester, though actually he had been required to register as a sex offender for an offense that did not involve a child. Vasquez attacked Rainwater in their mobile home park, punched him in the back of the head and then stabbed him until he was nearly decapitated.

**California:** A veteran prison guard at the California Men's Colony was sentenced to 30 days in jail in August 2013 for accepting bribes. Kevin Jon Venema, 50, was confronted by internal affairs officers who accused him of selling tobacco and cell phones to prisoners. Venema, initially

charged with three felonies, pleaded no contest to one count of accepting a bribe as a correctional officer. His sentence included three years of probation in addition to the jail term.

**California:** Santa Barbara County jail guards Robert Kirsch and Christopher Johnson pleaded not guilty on August 30, 2013 to charges of assaulting a prisoner. They were released on their own recognizance and had no comment after their arraignment. "Our agency does not tolerate the unnecessary or excessive use of force. I am saddened by these allegations," Sheriff Bill Brown said in a statement.

**Colorado:** In a 400-page report, the Colorado Bureau of Investigation concluded that wrongdoing by jail officials was not responsible for the in-custody death of Zackary Dean Moffitt, 33, who suffered a cardiac arrest during a confrontation with deputies at the Summit County Jail. As a result of the report, the 5th Judicial District Attorney's Office issued a declination letter on August 26, 2013, confirming that they would not pursue criminal charges related to Moffitt's death.

**Florida:** A Pasco County Jail nurse's assistant was fired and arrested on August 27, 2013 after she used her agency laptop to hack into the email accounts of Sheriff Chris Nocco and other top jail staff. Diedre Devonne Fitzgerald, 24, was released on \$15,000 bail after she admitted to unlocking passwords and using the hacked accounts to obtain confidential material. She had worked at the jail for almost two years.

**Georgia:** On September 9, 2013, Georgia state prisoner Jesse Barrett Mainor was charged with impersonating a police officer in connection with a telephone scam. Mainor had made phone calls to at least nine Alabama residents, claimed they had outstanding warrants and attempted to get them to send him money on Green Dot MoneyPak cards. A grand jury will decide whether Mainor, who also has outstanding charges in Florida, will face trial on eight other charges related to the phone scam.

**Georgia:** At a hearing in Bibb County Superior Court on August 26, 2013, former jail guard Nazon Eo'ne Johnson, 22, was sentenced to four years' probation for bringing alcohol into Central State Prison and violating his oath of office. Another guard, Paris Dewayne Watson, who pleaded guilty

to the same charges, admitted the alcohol was for consumption while on duty. Both guards were sentenced as first-time offenders, and must surrender their Peace Officer Standards and Training certification and pay fines and attorney fees in addition to their terms of probation.

**Illinois:** Kenneth Conley, who escaped from the Metropolitan Correctional Center in December 2012 while facing federal bank robbery charges, was sentenced to a prison term of 41 months on February 24, 2014. Conley, 40, and fellow prisoner Joseph Banks had used bed sheets and dental floss to rappel 17 stories from a window at the high-rise jail; they then escaped in a cab. Banks was caught two days later while Conley remained on the run for 18 days. At his sentencing hearing, while the judge was explaining the 41-month sentence for the escape charge, Conley told him, "You can take your analogy and shove it right up your ass."

**India:** On September 2, 2013, Jai Shankar, also known as "Psycho Killer Shankar," a convicted murderer and rapist, escaped from the high-security Parappana Agrahara jail with the help of a duplicate key and a bed sheet, which he used to climb down a wall. Shankar also allegedly scaled two 15-foot walls and wore a police uniform when he absconded. Eleven jail employees were suspended in connection with the escape.

**Indiana:** Michael Snow, a shift supervisor at the Marion County Jail, was bitten by prisoner Deondre Langston on August 22, 2013. Guards were trying to transfer Langston to the medical unit for a psychological evaluation when he resisted and charged at Snow with his head down. He then wrapped his arms around Snow's legs and bit him on the thigh. Snow was treated for the bite wound, which broke the skin and caused bruising; he plans to file charges against Langston.

**Indiana:** On July 30, 2013, Marcus Crenshaw, a guard at the Indiana State Prison, was caught bringing three-quarters of a pound of marijuana into the facility. He was suspended without pay and charged with trafficking with an offender, a Class C felony. Crenshaw was stopped and searched at the start of his shift and found to be in possession of approximately 343 grams of marijuana that DOC officials said was

**PENACON.COM**

Helping the incarcerated community gain connections around the world!

Post your profile on an easy to navigate website for millions of viewers to see. Gain new penpals and look forward to receiving mail!

One Year Ad Only \$35  
Until Release Date Ad \$95

Request a form today!  
Send a S.A.S.E. to:  
Penacon.com  
P.O. Box 1037  
Edna, TX 77957

USE CODE  
PLNSOFF  
FOR \$5 OFF



intended for delivery to a prisoner.

**Indiana:** Two unnamed Indiana State Prison guards were hospitalized following an August 22, 2013 incident in which they were stabbed by prisoner Terrance Swann. One was injured so severely that he had to be airlifted to Wishard Memorial Hospital in Indianapolis; the other guard was treated at a Michigan City hospital and returned to work later that same day. The prison was placed on lockdown after the attacks and Swann was transferred to the Westville Correctional Facility.

**Kentucky:** A contract food service worker was charged with rape and promoting contraband at the Henderson County Detention Center on September 11, 2013. Brittany L. Murch, 26, was jailed on two felony counts of third-degree rape and two felony counts of first-degree promoting contraband. State police said Murch had sex with a prisoner and brought him methamphetamine and alcohol. She pleaded guilty to the charges and was sentenced on February 25, 2014 to concurrent terms of 12 months on each count of rape and three years on each contraband charge.

**Louisiana:** As a result of a joint investigation involving the Louisiana State Police and Lincoln Parish Sheriff's Office, prison guard Danny Henshaw was charged with using excessive force against a prisoner during a disturbance at the Lincoln Parish Detention Center. Henshaw resigned from the Sheriff's Office and turned himself in on August 22, 2013. The prisoner was examined by medical staff at the facility but did not report any injuries as a result

of the incident.

**Maryland:** Prince George's County deputy sheriff Lamar McIntyre pleaded guilty on August 15, 2013 to two counts of sexual misconduct. He was initially charged with rape, but the charges were reduced after the female prisoner he had been accused of assaulting told investigators the sex was consensual. A \$15 million lawsuit was filed against the former deputy by the 34-year-old prisoner, who said the incident occurred inside a holding cell while she awaited a court hearing.

**Mexico:** A prison in the Mexican town of Nuevo Laredo, across the border from Laredo, Texas, was the site of yet more violence in Mexico's overcrowded prison system. On August 29, 2013, eight prisoners were murdered with homemade knives after being transferred to the facility; it was unclear whether the killings were gang-related. In October 2013, *PLN* reported a violent disturbance at a prison in the central Mexican state of San Luis Potosi that left 11 prisoners dead and more than 65 injured.

**Michigan:** Derreck White, also known as Abraham Pearson, attacked Deputy Harrison Tolliver in a holding cell near a Detroit courtroom on September 9, 2013. Using a sharpened comb to stab the guard three times in the neck, White handcuffed Tolliver and left the courthouse wearing his uniform; he then carjacked a minivan and escaped. White was captured later the same night while walking along I-94. Harrison was treated at a local hospital and released.

**Mississippi:** Tyler Smith, 20, beat fellow prisoner Clifton Majors, 35, to death at the Central Mississippi Correctional Facility on September 1, 2013, because he feared that Majors and other prisoners planned to harm him. MDOC Commissioner Christopher Epps said "breaches in security" in the maximum-security area of the prison allowed the deadly assault to occur. Investigators said there was no indication Smith had used a weapon in the attack.

**Mississippi:** As many as 90 prisoners were released from their cells on August 24, 2013 after an altercation between a guard and a prisoner resulted in the prisoner gaining control of the keys to many of the pods in C Building at the Lauderdale County Jail. Sheriff Billy Sollie said six prisoners were charged with arson, escape, simple assault and aiding escape in connection with the disturbance. Surveillance video helped investigators identify the prisoners involved in the incident.

**Nevada:** There's the Mile High Club, then there's the 2.9 Mile Drive Club. That's the distance between the Clark County Detention Center (CCDC) and the city jail, which provided prisoners Carlisa Brookins and Alexis Garcia enough time to engage in oral sex while they were being transported in a jail van on August 8, 2013. After the tryst was discovered, Brookins and Garcia were returned to the CCDC where they were charged with voluntary sex with an inmate. Brookins said she performed the act to "make the guys in the back of the bus jealous."

**Nevada:** Michael Marcel Law pleaded



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription!

Quarterly drawing WINS \$100! (Void in New York)  
(Last Quarter's winner from Airway Heights, WA.)

**TELL YOUR FRIENDS! ACT NOW!!**



**PO Box 2063 • Fort Walton Beach FL. 32549**

**[www.InmateMagazineService.com](http://www.InmateMagazineService.com)**

## **Inmate Magazine Service**



## News In Brief (cont.)

guilty on January 7, 2014 to felony battery charges stemming from an incident at the Clark County Detention Center. Law walked into the jail with an aluminum baseball bat in September 2013 and proceeded to attack jail guard Darren McCray, who was the first officer he encountered. Law told detectives he was seeking revenge against the police for failing to conduct a proper investigation after he was robbed. He was sentenced to 3–10 years on March 3, 2014.

**New Hampshire:** On September 4, 2013, the New Hampshire Executive Council rejected a pardon request from Thomas Schoolcraft, a former Cheshire County jail guard who was convicted in 2004 for a series of home burglaries. The Council voted 3-2 to deny the pardon, with Councilmember Christopher Sununu stating that Schoolcraft's crimes were still "fresh in the minds" of his victims. Schoolcraft is currently pursuing a master's degree in criminology and had hoped a pardon would allow him to resume working in law enforcement.

**New York:** While incarcerated at the St. Lawrence County Correctional Facility,

Joshua Henderson entered another prisoner's cell, pushed him down and allegedly reached into the victim's pants and grabbed his genitals. Henderson, 24, was charged with forcible touching and second-degree harassment in connection with the August 30, 2013 incident.

**New York:** On August 25, 2013, Robert Smalls, an off-duty prison guard, shot his 17-year-old son. There were conflicting accounts regarding what happened. Smalls told investigators he thought there was an intruder and felt he was in immediate danger; his son, Quasaun, told police the two had been arguing. Quasaun fled the hospital before being treated for the gunshot wound, and his father was charged with felony assault and criminal possession of a weapon.

**North Dakota:** New Castle Correctional Facility prisoner Michael Howard Hunter mailed a threatening letter to federal judge Rodney Webb on December 12, 2012. He was charged with sending the letter even though Judge Webb had died more than three years earlier, and pleaded guilty on September 2, 2013. He faces up to 10 years in federal prison.

**Ohio:** On August 16, 2013, federal prosecutors filed charges against Marlon

Taylor, a former guard at the Lorain County Jail, for repeatedly striking a prisoner and causing him bodily injury. The Lorain County Sheriff's Office had previously released surveillance video of the incident. [See: *PLN*, Jan. 2013, p.50]. Taylor was charged with one count of deprivation of rights under color of law.

**Ohio:** Death row prisoner Billy Slagle's August 4, 2013 suicide was accomplished with an "item of permissible property," according to Department of Rehabilitation and Correction spokeswoman JoEllen Smith. Slagle killed himself hours before he was scheduled to be placed on 24-hour suicide watch in advance of his execution for the 1988 stabbing death of Mari Anne Pope during a burglary. Officials at the Chillicothe Correctional Institution would not say what the item was and did not provide details regarding the manner of Slagle's death.

**Ohio:** According to Richland County Assistant Prosecutor Brent Robinson, on August 12, 2013, Robert A. Picklesimer, 54, a food service supervisor at the Mansfield Correctional Institution, was indicted on one count of sexual battery, one count of theft in office and two counts of bribery. "He was permitting these inmates to have

## PLN Classifieds

### AMBLER DOCUMENT PROCESSING

Type, Design and Prepare Manuscripts for Self-Publishing  
Reasonable Rates!-Accept all Genres!  
P.O. Box 938, Norwalk, CT 06852

### The VOICES.CON Newsletter – Free

Written by lifers for lifers. For info on how to receive Voices.Con monthly, send SASE to: PO Box 361, King City, CA 93930.  
On the web at: [VoicesDotCon.org](http://VoicesDotCon.org);  
Email: [Publisher@VoicesDotCon.org](mailto:Publisher@VoicesDotCon.org)

### Help from Beyond the Walls

New Services and Fast Turnaround Pictures, publications, phone services and more. Write today for free brochure. P.O. Box 185, Springvale, ME 04083

### Want Quality Pictures of

Quality Babes? 4x6 High Res pics  
Send self addressed stamped envelope for free catalog!  
PHOTO TRYST  
PO Box 103  
Chapmansboro TN 37035

### Free Facebook & Instagram setup

People searches, release shopping Amazon books, book editing, photo Duplications, flower & gift, drivers License & state case legal research.  
[Viprisonersservices@gmail.com](mailto:Viprisonersservices@gmail.com)  
P.O. Box 584609, Kissimmee, FL 34749  
for info or email.

### Ibrahim Books & Gifts

PO Box 4141, Phila, PA 19144  
Ph.267-586-3309 [ibrahimbooks.com](http://ibrahimbooks.com)  
\*Islamic Gift Baskets\*CD's\*DVD's  
Quality Service\*Affordable Rates  
Write for FREE catalog  
Your resource for authentic books  
According to The Qur'aan&Sunnah

### NON NUDE FLIX CATALOG \$2 + SASE

M and M Publications PO Box 1127  
Roanoke, TX 76262

### CHRISTIAN PRISON PEN PALS/ OUTLAWS ONLINE, PO Box 333,

Inverness, Florida 34451. Checks/M.O. payable to Inmate Services Request Information Photo, Desc., 400 word bio \$25

### PUZZLE BOOKS & EYE GLASSES

Brochure & Free Gifts  
Send 2 Forever Stamps or \$1.00  
Mara Worldwide  
115 W. California Blvd Ste 424-R  
Pasadena, CA 91105

### IF YOU WANT THE BEST TRY EPS!

Legal Research & Forms, Internet & People Searches, Amazon Books, Erotic Photos, PenPals, Special Requests and More. Send SASE to: Elite Paralegal & Prisoner Services  
PO Box 1717, Appleton, WI 54912

food in exchange for allowing him to touch them in sexual ways,” Robinson stated.

**Oklahoma:** Prison officials said Donald Lee Grayson, 61, gained access to a laptop from his prison cell and filed false tax returns using the names and bank accounts of fellow prisoners. In August 2013, Grayson received concurrent sentences of 18 months for each of three counts of filing false returns, and will be required to pay restitution. A guard discovered the scheme after noticing a power cord in Grayson’s cell. Investigators said he received fraudulent tax refunds in the amount of \$14,226.

**Oklahoma:** A lawsuit filed on August 13, 2013 claims that prisoner Philip Thomas Burris, Jr. was forced to have sex with female prison employee Kasey McDonald “50 to 100” times at the Joseph Harp Correctional Center. McDonald was arrested and charged with engaging in sexual misconduct – the fifth such case involving a Joseph Harp employee since 2008. The lawsuit also alleges that Burris’ former case manager supplied him with cell phones and marijuana. “These things happen,” said Corrections Department spokesman Jerry Massie.

**Oklahoma:** Mark Gregory Valadez faces additional charges after he was

booked into the Oklahoma County jail on September 1, 2013 with a loaded derringer concealed in his rectum. He managed to avoid a metal detector and was only caught after bragging to other prisoners about smuggling the weapon into the facility. Valadez was hospitalized to have the pistol removed and now faces felony charges of possession of contraband in a penal institution.

**Pennsylvania:** On September 12, 2013, a jury acquitted former veteran federal prison guard Lamont Lucas of having sex with a female prisoner after the defense argued that the prisoner was a habitual liar. [See: *PLN*, Sept. 2013, p.17]. The jury rejected the prisoner’s story and was presented with powerful character evidence in support of Lucas. An attorney for the defense said Lucas, who had been suspended without pay following the accusations, was unlikely to return to his job with the Bureau of Prisons.

**Tennessee:** A dietitian at the Unicoi County Jail was arrested on September 6, 2013 and charged with introducing drugs into a penal facility. Faith A. Smith allegedly met with a prisoner’s family member who provided the drugs that she brought into the jail.

**Texas:** Justin P. MacDonald, 29, was in the Dallas County Jail on a probation violation and just wanted some fresh air. He walked out the front doors of the facility while taking out the trash on July 26, 2013, which prompted a lockdown. MacDonald was spotted walking outside in jail-issued pants with no shirt, and quickly captured. He now faces a felony escape charge. “The investigation is ongoing to determine how the inmate made it to the outside of the facility,” said sheriff’s department spokesman Raul Reyna.

**Tunisia:** On September 2, 2013, police and soldiers searched for 49 prisoners who had escaped from a facility in the southern coastal town of Gabes. Colonel Hicham Ouni, security director for Tunisia’s prisons, told the Associated Press that the prisoners were mostly young and none were incarcerated for terrorism-related crimes. Tunisia’s prison system is at more than triple capacity, with around 22,000 prisoners.

**Utah:** Christopher Stein Epperson, a former Wasatch County sheriff’s deputy, was charged with taking advantage of his position as a jail guard to physically abuse two female prisoners. [See: *PLN*, April 2012, p.1]. He pleaded guilty to the federal charges on August 29, 2013, and faces up to

#### **MIDNIGHT EXPRESS BOOKS**

THE PREFERRED & ONLY FULL TIME  
company helping inmate authors  
publish books for 10+ years.  
PO Box 69, Dept PLN,  
Berryville, AR 72616  
Midnightexpressbooks.com  
Corrlinks: MEBooks1@yahoo.com

#### **FREE BOOK CATALOG & PRAYER CARD**

Send \$1 for S&H or  
SASE w/2 (two) US Forever Stamps  
Fiction, Nonfiction, Dictionary,  
Pastimes & Religious books  
English & Spanish.  
Jaguar Books 6881 Stanton Ave #F  
Buena Park CA 90621

#### **Education Behind Bars Newsletter**

Free electronic newsletter  
For prisoners viaCorrLinks.  
Add news@prisonlawblog.com  
to subscribe. The content  
is curated specifically  
for prisoners.

#### **SURROGATE SISTERS**

Celebrating 18+Years in Business  
No Games. We Sell Photos of Sexy  
Women, Gifts for Loved Ones,  
Erotic Stories & Pen-Pal Service  
Free Info & Flyer Send SASE to:  
Surrogate Sister – PN  
PO Box 95043, Las Vegas NV 89193

#### **Prisonerinmatefamilyservice.com**

Send a SASE for a free catalog;  
PO Box 1852 Pismo Beach, Ca 93448  
We buy stamps- 7.50 a book;  
Single stamps .25 cents; Amazon  
Orders, copies of photos/artwork  
And SO much more!  
FamilyInmateSev@aol.com

#### **LOCAL PHONE NUMBERS \$2.50/MO.**

USA anywhere 5¢/min. To MX 15¢  
Great rates all over the world!  
No signup fee, no hidden fees!  
Refer new cust, 300 free mins!  
[www.FreedomLine.net](http://www.FreedomLine.net) to sign up  
or write FreedomLine, Box 7-WCB  
C’ville IN 47331. Save BIG \$\$\$!

#### **A DEGREE/ORDINATION FROM PRISON**

Correspondence Courses via mail  
INT’L CHRISTIAN COLLEGE&SEMINARY  
PO BOX 530212 Debary, FL 32753-0212  
Associates thru PhD credit for  
Life Experience \*ACCREDITED\*  
Tuition as Low as \$19.95 a month  
Send SASE for a Free Evaluation

#### **Celebrity Photos For Sale:**

Send self addressed stamped  
envelope for lists. Name stars  
you would like to order photos of.  
Start your collection today!  
Photoworld-PLN  
PO Box 401016  
Las Vegas, Nv. 89140

#### **#1 PHOTO FORWARDING SERVICE**

**\*\*SPECIAL\*\*** \$25.00 for 60 Photos!  
Email & Text your photos 2 us  
We Print & Mail them 2 YOU!  
[www.Infolincs.com](http://www.Infolincs.com) (4 more info)  
Email: [infolincs@centurylink.net](mailto:infolincs@centurylink.net)  
Check/\$\$ Order: InfolINCS, LLC  
PO Box 644, Shady Cove, OR 97539

10 years in prison for each of two counts of deprivation of rights under color of law.

**Virginia:** Former Augusta Correctional Center guard Brian Peduto was three months into serving a suspended sentence for attempting to have sex with a 12-year-old girl when he began having a sexual relationship with a minor. He was not spared prison the second time, and received a three-year sentence on August 26, 2013. Peduto apologized before he was sentenced,

saying, "It's time for me to stay away from girls in general."

**Washington:** A riot broke out at the Pend Oreille County Jail on July 7, 2013, and ten prisoners now face additional charges as a result. Two cells were flooded during the disturbance, which caused water damage in an adjoining courtroom. Although no serious injuries were reported, one prisoner allegedly attacked a guard, another intimidated a witness and there were two prisoner-on-prisoner assaults. The jail was locked down for several hours following the riot.

**Washington:** Sarah Brooks, a prison therapist specializing in sexual deviancy treatment, was charged with engaging in sexual activity with a sex offender. [See: *PLN*, Sept. 2013, p.17]. Brooks pleaded guilty on August 20, 2013 to a lesser offense and was sentenced to 24 months on probation. As part of the plea deal she must also complete alcohol treatment and mental health counseling. According to prosecutors, Brooks developed a sexual relationship with a male prisoner; however, he did not want to press charges, which resulted in the reduced charge and plea deal. ■

## **Criminal Justice Resources**

### **ACLU National Prison Project**

Handles state and federal conditions of confinement claims affecting large numbers of prisoners. Publishes the NPP Journal (available online at: [www.aclu.org/national-prison-project-journal-fall-2011](http://www.aclu.org/national-prison-project-journal-fall-2011)) and the Prisoners' Assistance Directory (write for more information). Contact: ACLU NPP, 915 15th St. NW, 7th Fl., Washington, DC 20005 (202) 393-4930. [www.aclu.org/prisons](http://www.aclu.org/prisons)

### **Amnesty International**

Compiles information about prisoner torture, beatings, rape, etc. to include in reports about U.S. prison conditions; also works on death penalty issues. Contact: Amnesty International, 5 Penn Plaza, New York NY 10001 (212) 807-8400. [www.amnestyusa.org](http://www.amnestyusa.org)

### **Center for Health Justice**

Formerly CorrectHELP. Provides information related to HIV in prison – contact them if you are not receiving proper HIV medication or are denied access to programs due to HIV status. Contact: CHJ, 900 Avila Street, Suite 102, Los Angeles, CA 90012. HIV Hotline: (214) 229-0979 (collect calls from prisoners OK). [www.centerforhealthjustice.org](http://www.centerforhealthjustice.org)

### **Centurion Ministries**

Works to exonerate the wrongfully convicted, in both cases involving DNA evidence and those that do not. Centurion only takes 1-2 new cases a year involving actual innocence. They do not consider accidental death or self-defense murder cases, he said/she said rape cases, or child abuse or child sex abuse cases unless there is physical evidence. All case inquiries must be from the prisoner involved, in writing. Contact: Centurion Ministries, 221 Witherspoon Street, Princeton, NJ 08542 (609) 921-0334. [www.centurionministries.org](http://www.centurionministries.org)

### **Critical Resistance**

Seeks to build an international movement to abolish the Prison Industrial Complex, with offices in Florida, California, New York, Texas and Louisiana. Publishes The Abolitionist newsletter. Contact: Critical Resistance, 1904 Franklin Street #504, Oakland, CA 94612 (510) 444-0484. [www.criticalresistance.org](http://www.criticalresistance.org)

### **The Exoneration Project**

The Exoneration Project is a non-profit organization dedicated to working to free prisoners who were wrongfully convicted. The Project represents innocent individuals in post-conviction legal proceedings; typical cases involve DNA testing, coerced confessions, police misconduct, the use of faulty evidence, junk science and faulty eyewitness testimony, and ineffective assistance of counsel claims. Contact: The Exoneration Project, 312 North May Street, Suite 100, Chicago, Illinois 60607 (312) 789-4955. [www.exonerationproject.org](http://www.exonerationproject.org)

### **Family & Corrections Network**

Primarily provides online resources for families of prisoners related to parenting, children of prisoners, prison visitation, mothers and fathers in prison, etc. Contact: F&CN, 93 Old York Road, Suite 1 #510, Jenkintown, PA 19046 (215) 576-1110. [www.fcnetwork.org](http://www.fcnetwork.org)

### **FAMM**

FAMM (Families Against Mandatory Minimums) publishes the FAMMgram three times a year, which includes information about injustices resulting from mandatory minimum laws with an emphasis on federal laws. Recommended donation of \$10 for a subscription. Contact: FAMM, 1612 K Street NW #700, Washington, DC 20006 (202) 822-6700). [www.famm.org](http://www.famm.org)

### **The Fortune Society**

Provides post-release services and programs for prisoners in the New York City area and occasionally publishes Fortune News, a free publication for prisoners that deals with criminal justice issues, primarily in New York. Contact: The Fortune Society, 29-76 Northern Blvd., Long Island City, NY 11101 (212) 691-7554. [www.fortunesociety.org](http://www.fortunesociety.org)

### **Innocence Project**

Provides advocacy for wrongly convicted prisoners whose cases involve DNA evidence and are at the post-conviction appeal stage. Maintains an online list of state-by-state innocence projects. Contact: Innocence Project, 40 Worth St., Suite 701, New York, NY 10013 (212) 364-5340. [www.innocenceproject.org](http://www.innocenceproject.org)

### **Just Detention International**

Formerly Stop Prisoner Rape, JDI seeks to end sexual violence against prisoners. Provides counseling resources for imprisoned and released rape survivors and activists for almost every state. Contact: JDI, 3325 Wilshire Blvd. #340, Los Angeles, CA 90010 (213) 384-1400. [www.justdetention.org](http://www.justdetention.org)

### **Justice Denied**

Although no longer publishing a print magazine, Justice Denied continues to provide the most comprehensive coverage of wrongful convictions and how and why they occur. Their content is available online, and includes all back issues of the Justice Denied magazine and a database of more than 3,000 wrongly convicted people. Contact: Justice Denied, P.O. Box 68911, Seattle, WA 98168 (206) 335-4254. [www.justicedenied.org](http://www.justicedenied.org)

### **National CURE**

Citizens United for Rehabilitation of Errants (CURE) is a national organization with state and special interest chapters that advocates for rehabilitative opportunities for prisoners and less reliance on incarceration. Publishes the CURE Newsletter. \$2 annual membership for prisoners. Contact: CURE, P.O. Box 2310, National Capitol Station, Washington, DC 20013 (202) 789-2126. [www.curenational.org](http://www.curenational.org)

### **November Coalition**

Publishes the Razor Wire, a bi-annual newsletter that reports on drug war-related issues, releasing prisoners of the drug war and restoring civil rights. A subscription is \$10 for prisoners and \$30 for non-prisoners. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 684-1550. [www.november.org](http://www.november.org)

### **Prison Activist Resource Center**

PARC is a prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, able-ism, heterosexism and classism, specifically within the Prison Industrial Complex. PARC produces a free resource directory for prisoners, and supports activists working to expose and end the abuses of the Prison Industrial Complex and mass incarceration. Contact: PARC, P.O. Box 70447, Oakland, CA 94612 (510) 893-4648. [www.prisonactivist.org](http://www.prisonactivist.org)

# Prison Legal News Book Store

Fill in the boxes next to each book you want to order, indicating the quantity and price. Enter the Total on the Order Form on the next page.  
**FREE SHIPPING on all book / index orders OVER \$50 (effective 9-1-2013 until further notice). \$6.00 S/H applies to all other book orders.**

## SUBSCRIBE TO PLN FOR 4 YEARS AND CHOOSE ONE BONUS!

1. **SIX (6) FREE ISSUES FOR 54 TOTAL! OR**
2. **PRISON PROFITEERS (A \$24.95 VALUE!) OR**
3. **WITH LIBERTY FOR SOME (AN \$18.95 VALUE!)**

**Prison Profiteers**, edited by Paul Wright and Tara Herivel, 323 pages. **\$24.95.** This is the third book in a series of Prison Legal News anthologies that examines the reality of mass imprisonment in America. *Prison Profiteers* is unique from other books because it exposes and discusses who profits and benefits from mass imprisonment, rather than who is harmed by it and how. 1063

**With Liberty for Some: 500 Years of Imprisonment in America**, by Scott Christianson, Northeastern University Press, 372 pages. **\$18.95.** The best overall history of the American prison system from 1492 through the 20th Century. A must-read for understanding how little things have changed in U.S. prisons over hundreds of years. 1026

**Prison Nation: The Warehousing of America's Poor**, edited by Tara Herivel and Paul Wright, 332 pages. **\$35.95.** PLN's second anthology exposes the dark side of the 'lock-em-up' political agenda and legal climate in the U.S. 1041

**The Ceiling of America, An Inside Look at the U.S. Prison Industry**, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. **\$22.95.** PLN's first anthology presents a detailed "inside" look at the workings of the American justice system. 1001

**Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada**, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, PLN Publishing, 221 pages. **\$49.95.** Written by Missouri prisoner Jon Marc Taylor, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, para-legal and college courses by mail. 1071

**The Criminal Law Handbook: Know Your Rights, Survive the System**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 608 pages. **\$39.99.** Explains what happens in a criminal case from being arrested to sentencing, and what your rights are at each stage of the process. Uses an easy to understand question-and-answer format. 1038

**Represent Yourself in Court: How to Prepare & Try a Winning Case**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 528 pages. **\$39.99.** Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. The authors explain what to say in court, how to say it, etc. 1037

**Law Dictionary**, Random House Webster's, 525 pages. **\$19.95.** Comprehensive up-to-date law dictionary explains more than 8,500 legal terms. Covers civil, criminal, commercial and international law. 1036

**The Blue Book of Grammar and Punctuation**, by Jane Straus, 110 pages. **\$14.95.** A guide to grammar and punctuation by an educator with experience teaching English to prisoners. 1046

**Legal Research: How to Find and Understand the Law**, by Stephen Elias and Susan Levinkind, 568 pages. **\$49.99.** Comprehensive and easy to understand guide on researching the law. Explains case law, statutes and digests, etc. Includes practice exercises. 1059

**Deposition Handbook**, by Paul Bergman and Albert Moore, Nolo Press, 352 pages. **\$34.99.** How-to handbook for anyone who conducts a deposition or is going to be deposed. 1054

**Criminal Law in a Nutshell**, by Arnold H. Loewy, 5th edition, 387 pages. **\$43.95.** Provides an overview of criminal law, including punishment, specific crimes, defenses & burden of proof. 1086

## SUBSCRIBE TO PLN FOR 3 YEARS AND CHOOSE ONE BONUS!

1. **FOUR (4) FREE ISSUES FOR 40 TOTAL! OR**
2. **PROTECTING YOUR HEALTH AND SAFETY (A \$10.00 VALUE!)**

**Protecting Your Health and Safety**, by Robert E. Toone, Southern Poverty Law Center, 325 pages. **\$10.00.** This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how to enforce your rights, including through litigation. 1060

**Spanish-English/English-Spanish Dictionary**, 2nd ed. Random House. **\$15.95.** Spanish-English and English-Spanish. 60,000+ entries from A to Z; includes Western Hemisphere usage. 1034a

**Writing to Win: The Legal Writer**, by Steven D. Stark, Broadway Books/Random House, 283 pages. **\$19.95.** Explains the writing of effective complaints, responses, briefs, motions and other legal papers. 1035

**Actual Innocence: When Justice Goes Wrong and How to Make it Right**, updated paperback ed., by Barry Scheck, Peter Neufeld and Jim Dwyer, 403 pages. **\$16.00.** Describes how criminal defendants are wrongly convicted. Explains DNA testing and how it works to free the innocent. Devastating critique of police and prosecutorial misconduct. 1030

**Webster's English Dictionary**, Newly revised and updated, Random House. **\$8.95.** 75,000+ entries. Includes tips on writing and word usage, and has updated geographical and biographical entries. Includes recent business and computer terms. 1033

**Everyday Letters for Busy People**, by Debra Hart May, 287 pages. **\$18.99.** Hundreds of sample letters that can be adapted for most any purpose, including letters to government agencies and officials. Has numerous tips for writing effective letters. 1048

**Roget's Thesaurus**, 717 pages. **\$8.95.** Helps you find the right word for what you want to say. 11,000 words listed alphabetically with over 200,000 synonyms and antonyms. Sample sentences and parts of speech shown for every main word. Covers all levels of vocabulary and identifies informal and slang words. 1045

**Beyond Bars, Rejoining Society After Prison**, by Jeffrey Ian Ross, Ph.D. and Stephen C. Richards, Ph.D., Alpha, 240 pages. **\$14.95.** *Beyond Bars* is a practical and comprehensive guide for ex-convicts and their families for managing successful re-entry into the community, and includes information about budgets, job searches, family issues, preparing for release while still incarcerated, and more. 1080

**Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A.**, by Mumia Abu Jamal, City Lights Publishers, 280 pages. **\$16.95.** In *Jailhouse Lawyers*, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned-advocates who have learned to use the court system to represent other prisoners. 1073

**The Habeas Citebook: Ineffective Assistance of Counsel**, by Brandon Sample, PLN Publishing, 200 pages. **\$49.95.** This is PLN's second published book, written by federal prisoner Brandon Sample, which covers ineffective assistance of counsel issues in federal habeas petitions. Includes hundreds of case citations! 1078

**Complete GED Preparation**, by Steck-Vaughn, 922 pages. **\$24.99.** This useful handbook contains over 2,000 GED-style questions to thoroughly prepare students for taking the GED test. It offers complete coverage of the revised GED test with new testing information, instructions and a practice test. 1099

**\* ALL BOOKS SOLD BY PLN ARE SOFTCOVER / PAPERBACK \***

**Hepatitis and Liver Disease: What You Need to Know**, by Melissa Palmer, MD, 457 pages. **\$17.95.** Describes symptoms & treatments of hepatitis B & C and other liver diseases. Includes medications to avoid, what diet to follow and exercises to perform, plus a bibliography. 1031 ☐

**Arrested: What to Do When Your Loved One's in Jail**, by Wes Denham, 240 pages. **\$16.95.** Whether a defendant is charged with misdemeanor disorderly conduct or first-degree murder, this is an indispensable guide for those who want to support family members, partners or friends facing criminal charges. 1084 ☐

**Prisoners' Self-Help Litigation Manual**, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 960 pages. **\$39.95.** The premiere, must-have "Bible" of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Highly recommended! 1077 ☐

**How to Win Your Personal Injury Claim**, by Atty. Joseph Matthews, 7th edition, NOLO Press, 304 pages. **\$34.99.** While not specifically for prison-related personal injury cases, this book provides comprehensive information on how to handle personal injury and property damage claims arising from accidents. 1075 ☐

**Sue the Doctor and Win! Victim's Guide to Secrets of Malpractice Lawsuits**, by Lewis Laska, 336 pages. **\$39.95.** Written for victims of medical malpractice/neglect, to prepare for litigation. Note that this book addresses medical malpractice claims and issues in general, not specifically related to prisoners. 1079 ☐

**Advanced Criminal Procedure in a Nutshell**, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **\$43.95.** This text is designed for supplemental reading in an advanced criminal procedure course on the post-investigation processing of a criminal case, including prosecution and adjudication. 1090 ☐

**Our Bodies, Ourselves**, by The Boston Women's Health Book Collective, 944 pages. **\$26.00.** This book about women's health and sexuality has been called "America's best-selling book on all aspects of women's health," and is a great resource for women of all ages. 1082 ☐

**Arrest-Proof Yourself**, by Dale Carson and Wes Denham, 288 pages. **\$14.95.** This essential "how not to" guide written by an ex-cop explains how to act and what to say when confronted by the police to minimize the chances of being arrested and avoid additional charges. Includes information on basic tricks that police use to get people to incriminate themselves. 1083 ☐

**Nolo's Plain-English Law Dictionary**, by Gerald N. Hill and Kathleen T. Hill, 496 pages. **\$29.99.** Find terms you can use to understand and access the law. Contains 3,800 easy-to-read definitions for common (and not so common) legal terms. 3001 ☐

**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFave, 7th edition, 603 pages. **\$43.95.** Intended for use by law students, this is a succinct analysis of constitutional standards of major significance in the area of criminal procedure. 1085 ☐

**A Dictionary of Criminal Law Terms** (Black's Law Dictionary® Series), by Bryan A. Garner, 768 pages. **\$33.95.** This handbook contains police terms such as preventive detention and protective sweep, and phrases from judicial-created law such as independent-source rule and open-fields doctrine. A good resource to help navigate your way through the maze of legal language in criminal cases. 1088 ☐

**PLN Cumulative Index. \$22.50 each.** PLN Article Indexes provide detailed information about all PLN articles, including title, author, issue, page number, topics covered, citations, and if it is state, BOP or jail specific. Can be searched on over 500 subjects such as medical neglect or sexual assault. Circle the index(es) you are ordering: **1990-1995, 1996-1998, 1999-2001, 2002-2004** (more recent indexes not yet available) ☐

### Subscription Rates

	1 year	2 years	3 years	4 years
<b>Prisoners</b>	<b>\$30</b>	<b>\$ 60</b>	<b>\$ 90</b>	<b>\$120</b>
<b>Individuals</b>	<b>\$35</b>	<b>\$ 70</b>	<b>\$105</b>	<b>\$140</b>
<b>Professionals</b>	<b>\$90</b>	<b>\$180</b>	<b>\$270</b>	<b>\$360</b>

(Attorneys, agencies, libraries)

### Subscription Bonuses

- 2 years** - 2 bonus issues for 26 total issues  
**3 years** - 4 bonus issues (40 total) or a bonus book as listed on pg. 61  
**4 years** - 6 bonus issues (54 total) or a bonus book as listed on pg. 61

(All subscription rates and bonus offers are valid as of 9-1-2013)



Purchase with Visa, MasterCard, AmEx or Discover by phone: **561-360-2523**

Or buy books and subscriptions online: **www.prisonlegalnews.org**



### Mail Payment and Order to:

Prison Legal News  
P.O. Box 1151  
Lake Worth, FL 33460

**All purchases must be pre-paid. Prisoners can pay with new first-class stamps (strips or books only, no loose stamps) or pre-stamped envelopes, if allowed by institutional policies.**

Please **Change my Address** to what is entered below ☐

### Mail Order To:

Name: \_\_\_\_\_  
 DOC #: \_\_\_\_\_  
 Suite/Cell: \_\_\_\_\_  
 Agency/Inst: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_

### Subscribe to Prison Legal News

### \$ Amount

6 month subscription (prisoners only) - \$18 \_\_\_\_\_  
 1 yr subscription (12 issues) \_\_\_\_\_  
 2 yr subscription (2 bonus issues for 26 total!) \_\_\_\_\_  
 3 yr sub (*write below which FREE book you want*) \_\_\_\_\_  
     or 4 bonus issues for 40 issues total! \_\_\_\_\_  
 4 yr sub (*write below which FREE book you want*) \_\_\_\_\_  
     or 6 bonus issues for 54 issues total! \_\_\_\_\_  
 Random sample issue of PLN - \$3.50 each \_\_\_\_\_

### Books or Index Orders

(No S/H charge on 3 & 4-year sub free books OR book orders OVER \$50!)

Qty.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Add \$6.00 S/H to Book Orders UNDER \$50**

**FL residents ONLY add 6% to Total Book Cost**

**Total Amount Enclosed:**

\_\_\_\_\_

**\* No refunds on PLN subscription or book / index orders after orders have been placed \***



# 3RD STRIKE? WRONGLY CONVICTED? TERRORS?

ATTENTION!! CA 3<sup>RD</sup> STRIKERS DON'T BE LEFT OUT OR WAIT FOR THE SYSTEM. WE CAN HELP!

## INMATE LEGAL HELP 411 FREEDOM ANGELS

Brian P - "They helped me remove 4 life sentences

"Big" D McGwen - Back into Court.. And SET FREE

Tyron S. - 38 years deducted.. FREE NOW!

### PERSONALIZED & REASONABLY PRICED

#### ADVANCED LEGAL SERVICES

#### SUCCESSFUL WINNING STRATEGIES EVEN YOUR ODDS



We find the MISSING facts & information that were never considered or heard in your case originally.

OUR GOAL= Evidentiary Hearing for YOU!

MAKE FREEDOM A PRIORITY?

HAVE FAMILY / FRIENDS CALL NOW

PLANHELP@411FreedomANGELS.com

HABEAS Booklet ~ \$20 PayPal or Stamps

www.411FreedomANGELS.com



*You are in our thoughts and prayers*

### WRITS~MOTIONS~BRIEFS

3<sup>RD</sup> STRIKERS GO to TOP of the List

- Post Conviction Relief Assistance
- Writ Of Habeas Corpus-State / Federal
- Sentence Modifications
- Pre-Post Parole Board
- In House Legal Investigators
- Resolve Warrants on pending cases
- MANY Other Legal Services



AGGRESSIVE REPRESENTATION to PROTECT YOUR RIGHTS

JACKSON & ASSOCIATES LAW CENTERS

402 W. Broadway POB 81609 San Diego, CA 92138

24/7 call NOW! 1\*855\*411\*ANGELS (2643)

## Great Self-Help Book Deals From Prison Legal News!



### How to Win Your Personal Injury Claim

\$34.99

*How to Win Your Personal Injury Claim* shows you how to handle almost every accident situation, and guides you through the insurance claim process, step by step. Learn how to:

- protect your rights after an accident
- determine what your claim is worth
- handle a property-damage claim
- deal with uncooperative doctors, lawyers and insurance companies
- counter the special tactics insurance companies use
- prepare a claim for compensation
- negotiate a full and fair settlement
- stay on top of your case if you hire a lawyer

Order from Prison Legal News

Add \$6 shipping for orders under \$50

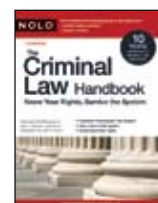
Prison Legal News

PO Box 1151

Lake Worth, FL 33460

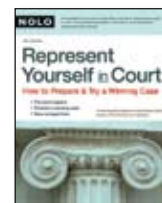
Phone: 561-360-2523

www.prisonlegalnews.org



The Criminal Law Handbook

\$39.99



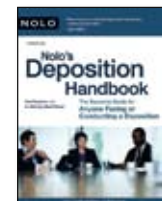
Represent Yourself in Court

\$39.99



Legal Research

\$49.99



Nolo's Deposition Handbook

\$34.99

NOLO  
YOUR LEGAL COMPANION





## Prison Legal News

PO Box 1151  
Lake Worth FL 33460

Change Service Requested

Non-Profit Org.  
U.S. Postage  
PAID  
Portland OR  
Permit No. 3142

### Subscription Renewal

Subscriptions expire after the issue shown on the label is mailed. For example, if the label says: EXPIRES 02/2015, then the subscription expires after the February 2015 issue is mailed. Please renew at least 2 months before the expiration date. IF THE LABEL SAYS **EXPIRES: 03/2014** THIS IS YOUR LAST ISSUE. Please renew immediately to avoid missing any issues.

### Change of Address

If you move or are transferred, please notify PLN as soon as possible so your issues can be mailed to your new address! PLN only accepts responsibility for sending an issue to the address provided at the time an issue is mailed!



# PRISONLEGALNEWS.org

**Dedicated to Protecting Human Rights**

>>FREE Data Search |

Decisions

Investigations

Audits

Publications

Cases

Verdicts

Settlements

**If you need to know about prisons and jails or are litigating a detention facility case, you can't afford not to subscribe to our website!**

**Online subscribers get unlimited, 24-hour a day access to the website and its content!**

 **Sign up for PLN's FREE listserv to receive prison and jail news and court rulings by e-mail.**

- ▶ PLN's website offers all issues of PLN in both searchable database and PDF formats. Issues are indexed and posted as soon as they go to press.
- ▶ Publications section has numerous downloadable government reports, audits and investigations from around the country.
- ▶ Full text decisions of thousands of court cases, published and unpublished.
- ▶ All content is easy to print for downloading and mailing to prisoners.
- ▶ Most complete collection of prison and jail related verdicts and settlements anywhere.
- ▶ Order books, print subscriptions and make donations on line.

- ▶ Brief bank with a wide assortment of winning motions, briefs, complaints and settlements.
- ▶ Links to thousands of prison, jail, criminal justice and legal websites around the world.
- ▶ Thousands of articles and cases, all fully indexed by more than 500 subjects, searchable by case name, case year, state of origin, court, author, location, case outcome, PLN issue and key word search.
- ▶ Search free, pay only if you find it!
- ▶ The highest quality, most comprehensive prison litigation news and research site in the world.

**Affordable rates to meet your budget  
\$19.95 per month • \$149.95 per year**

**Subscribe to Prison Legal News Online! <http://www.prisonlegalnews.org>**



## An Interview with Noam Chomsky on Criminal Justice and Human Rights

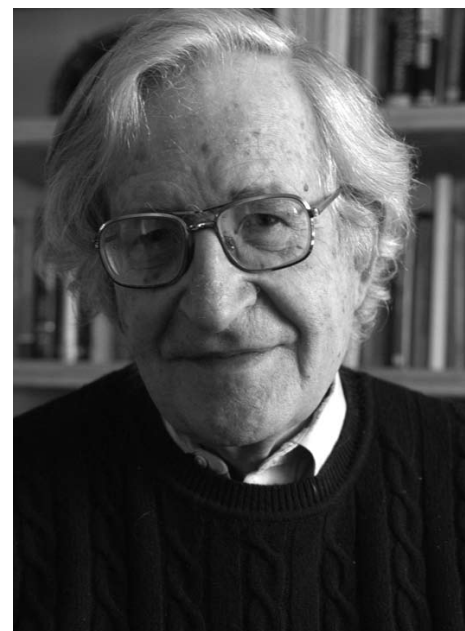
ON FEBRUARY 5, 2014, *PRISON LEGAL News* editor Paul Wright interviewed Noam Chomsky, 75, at his home in Lexington, Massachusetts. Professor Chomsky is the foremost dissident intellectual in the United States, and for decades has been a prominent critic of U.S. foreign policy, human rights abuses, imperialism and the media's facilitation of same. He is also one of the world's eminent linguists and has been a professor of linguistics at the Massachusetts Institute of Technology since 1955. He was arrested and jailed for anti-war activism in the 1960s.

The author of dozens of books on politics, media analysis, foreign policy and other issues, Professor Chomsky was also one of *PLN*'s earliest subscribers and has corresponded with Paul on various topics

since the early 1990s. However, in his books, essays and interviews, Professor Chomsky has rarely addressed human rights abuses in the United States with respect to policing and prisons – until now.

While Professor Chomsky agreed to be interviewed by *PLN*, scheduling was difficult due to his extensive travel and speaking schedule. It turned out that the day of the interview was also the day a massive snowstorm hit Boston, and he did not come into work. He graciously agreed to conduct the interview at his home, and Paul and *PLN* advertising director Susan Schwartzkopf made an adventurous cab ride through the snowstorm to his house.

We extend our thanks to Professor Chomsky for this interview and to his assistant, Beverly Stohl, for making the necessary arrangements.



*Noam Chomsky*

### INSIDE

From the Editor	16
Prison Food Allergy Policies	18
\$15 Million Settlement in NM	20
Recidivism & Family Communication	24
Arkansas DOC Suing Prisoners	30
TASERs May Cause Heart Attacks	34
Mass Incarceration by the Numbers	36
GPS Monitoring Problems in LA	40
Book Review: The Redbook	43
PLN Awarded Fees, Costs in OR Suit	44
Prisoner Organ Transplants, Donations	52
Excessive Force Claims in Oregon	54
News in Brief	56

...

**PAUL WRIGHT:** I think one of the things that's interesting is I've been reading your work since I was in high school, and I would say that for at least 30 years now, 30-plus years, I've been reading your work and all the interviews that you've done, and very few people ever ask you about domestic issues.

**NOAM CHOMSKY:** Really?

**PW:** Yes. About domestic stuff, in terms of ... you know, they ask you about human rights in other countries, but not about human rights in this country. I think you did one interview in the mid-90s which we reprinted in *Prison Legal News*.

**NC:** There are many. I don't know what happens to them. There are so many, I can't keep track. There's several a day.

**PW:** Okay. My first question, Professor Chomsky, is the United States

talks about human rights abroad but not domestically. Why is that? Why aren't Americans deemed to have human rights while people overseas are?

**NC:** Well, first of all, it's not true that people overseas are. We talk about human rights in enemy states, but we don't talk about them in our own client states. So, for example, compare, say, Eastern Europe and Latin America. Eastern Europe was Soviet domain in the post-Stalin, post-Second World War period, up until 1990. Eastern Europe was dominated by the Soviet Union. And there's an enormous amount of discussion about human rights in Eastern Europe. Human Rights Watch, the organization, pretty much grew out of Helsinki Watch, which was concerned specifically with Eastern Europe.

Well, what about the U.S. domains during the same period? Say, roughly 1960

## **DON'T LET THE TIME DO YOU. STAY CONNECTED!**

**Guaranteed savings of up to 90%** on your long distance, out-of-state, and international calls from Federal prisons, county jails and State prisons.

### **Best Rates and Plans**

Multi-number Friends & Family Package for as little as \$10.00/month

More plans & more numbers than any operator -

### **No Hidden Fees**

**What We Say Is What You Pay** – NO additional “fees”, “charges” or “surcharges”

International calls are billed only on call acceptance. No bogus rounding

### **No Contracts, No Penalties, No Hassles**

No long term commitments – Service is always month – to – month. Cancel at anytime with NO penalties and NO cancellation fees with just a phone call or an e-mail.

### **Fast and EZ Setup**

We **ALWAYS** have numbers and can set up instantaneously online or on the phone.

## **Special Commitment, Civil Detention & Halfway House**

\$0.40 connection charge from payphones  
lowest in the business

Voice Mail and Call Recording options

Call, write, e-mail or have your loved ones check out our website for more information.

SP Telecom  
1220 Broadway - # 801-A  
New York, NY 10001  
[www.inmatefone.com](http://www.inmatefone.com)  
e-mail: [clients@inmatefone.com](mailto:clients@inmatefone.com)  
Español: [soporte@inmatefone.com](mailto:soporte@inmatefone.com)  
Call: 1(845)326-5300 (Collect calls are NOT accepted)  
Español: 1(845)342-8110 (Llamadas por cobrar no se aceptan)

Some restrictions apply. Plan availability depends on the Institution

## **NO PERMITA QUE EL TIEMPO LE SEPRE DE SU FAMILIA!**

**Garantizamos ahorros de hasta el 90%** en sus llamadas de larga distancia, entre estados, y en las llamadas internacionales desde prisiones federales, estatales y locales.

### **Los mejores Planes y Tarifas**

Plan para familias y amigos con varios numeros por tan solo \$10.00/ mes .

Mas planes y numeros que ningun otro operador .

### **No hay letra pequeña**

**Lo Que Ves Es Lo Que Pagas**, NO hay ningun otro cargo extra.

Las llamadas internacionales solo se facturan cuando es aceptada por el familiar al otro lado del hilo telefonico.

**No hay contrato , permanencia ni ningun tipo de travas .**

El servicio siempre se ofrece en base a un mes de duracion pudiendo renovar el mismo todo los meses sin ningun cargo por la terminacion del servicio y lo puede solicitar con una simple llamada de telefono o con un correo electronico (E-MAIL)

**La solicitud se puede hacer rapida y muy facil .**

Nosotros siempre tenemos numeros y podemos procesar to registro inmediatamente en lines o por telefono.

**Detenidos civiles en carceles especiales y reclusos en camino a casas de medio camino le ofrecemos los siguientes servicios.**

\$0.40 de recarfo desde telefonos de prepago, la tarifa mas baja en el sector .

Buzon de Voz y la posibilidad de grabar las llamadas .





## Prison Legal News

*a publication of the*  
*Human Rights Defense Center*  
[www.humanrightsdefensecenter.org](http://www.humanrightsdefensecenter.org)

### EDITOR

Paul Wright

### MANAGING EDITOR

Alex Friedmann

### COLUMNISTS

Michael Cohen, Kent Russell,  
Mumia Abu Jamal

### CONTRIBUTING WRITERS

Matthew Clarke, John Dannenberg,  
Derek Gilna, Gary Hunter,  
David Reutter, Mark Wilson,  
Joe Watson, Christopher Zoukis

### RESEARCH ASSOCIATE

Mari Garcia

### ADVERTISING DIRECTOR

Susan Schwartzkopf

### LAYOUT

Lansing Scott

### HRDC LITIGATION PROJECT

Lance Weber—General Counsel  
Robert Jack—Staff Attorney

**PLN is a monthly publication.**

A one year subscription is \$30 for prisoners, \$35 for individuals, and \$90 for lawyers and institutions. Prisoner donations of less than \$30 will be pro-rated at \$3.00/issue. Do not send less than \$18.00 at a time. All foreign subscriptions are \$100 sent via airmail. PLN accepts Visa and Mastercard orders by phone. New subscribers please allow four to six weeks for the delivery of your first issue. Confirmation of receipt of donations cannot be made without an SASE. PLN is a section 501 (c)(3) non-profit organization. Donations are tax deductible. Send contributions to:

Prison Legal News  
PO Box 1151  
Lake Worth, FL 33460  
561-360-2523  
[info@prisonlegalnews.org](mailto:info@prisonlegalnews.org)  
[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

PLN reports on legal cases and news stories related to prisoner rights and prison conditions of confinement. PLN welcomes all news clippings, legal summaries and leads on people to contact related to those issues.

Article submissions should be sent to - The Editor - at the above address. We cannot return submissions without an SASE. Check our website or send an SASE for writer guidelines.

Advertising offers are void where prohibited by law and constitutional detention facility rules.

PLN is indexed by the *Alternative Press Index*, *Criminal Justice Periodicals Index* and the *Department of Justice Index*.

## Noam Chomsky Interview (cont.)

to 1990? You take a look at the scholarly literature, it's quite straight. Human rights in the U.S. domains of Latin America were under vastly greater attack than in Eastern Europe. It's true whether you look at the murders, torture, incarceration, slaughters the U.S. was carrying out, including a major war against the Church. The story after Vatican II, really, there were lots of religious martyrs.

So in 1989, the Berlin Wall falls. A lot of, you know, justified excitement; there's liberation in Eastern Europe. And what happens in Central America at that time? Well, shortly after the Berlin Wall fell, a Salvadoran brigade, the Atlacatl Brigade, U.S.-trained, U.S.-armed, fresh from renewed training at the John F. Kennedy School of Counter-Insurgency Warfare, under the orders of the high command, broke into the university and murdered six leading Jesuit intellectuals, leading Latin American intellectuals. Anything like that happen in Eastern Europe? I mean, people were, you know, Václav Havel was in prison, but he didn't have his head blown off. And this is the record all the way through. Is it discussed? No.

**PW: And I think it's interesting that you use the example of Eastern Europe because we can note that since the collapse of the Soviet Union and Eastern bloc countries, I think it's no coincidence that we now learn that Eastern European countries, like Poland, Lithuania and elsewhere, are leading rendition states for the United States to set up its secret torture prisons where people can be kidnapped and tortured with impunity, which, arguably, did not happen under the Soviet Union.**

NC: That's very interesting, in fact, because there was a study by the Open Society Forum of countries that had been involved in the U.S. rendition programs, and these, as you say, are kind of at the extreme end of commitment to torture. Taking suspects and sending them to countries like Syria or Egypt or Libya, where you know they're going to be tortured. Who participated? Well, of course, European countries mostly participated. The former Eastern European domains and Soviet Union did. The Middle East, of course, participated. That's where they were sending them to be tortured. One

region of the world didn't participate.

**PW: Latin America.**

NC: Latin America. What happened is in the past 10 years, roughly 10-15 years, Latin America has pretty much extricated itself from U.S. domination. Not entirely, but substantially. This is a dramatic example of it. It's kind of doubly interesting because during the period when Latin America was pretty much controlled by the United States, it was one of the world centers of torture. And now that it's somewhat, pretty much liberated itself, it didn't participate in the massive U.S. torture programs. And actually it shows up in other ways, too.

The U.N. Economic Commission for Latin America [recently] published a report on poverty reduction in Latin America. I don't think it was reported here. But it's striking. What it basically shows is the usual. The more countries that were free of U.S. control, free to carry out reforms, the more they carried out extensive poverty reduction. So Venezuela, Brazil, other countries had a very sharp reduction in poverty. You get closer to home, say, Guatemala and Honduras, poverty remains extreme. Now the interesting case is Mexico. A rich country, relatively speaking, under the NAFTA umbrella, and practically the only country where poverty substantially increased last year.

These are very systematic properties. But are they discussed? No. So it's not just human rights in the United States that aren't discussed, it's in U.S. domains even when it is really dramatic. Like, for example, Central America.

As you know, the huge increase in incarceration in the United States was mostly since around 1980, and during those years Central America was subjected to really massive atrocities, all backed by the United States or carried out by the United States. Hundreds of thousands of people slaughtered. All kinds of torture. The murder atrocities. I mentioned one case, but it's vastly greater. Now you take a look at, say, immigration today; there's a big immigration problem in the United States. So, for example, people are coming to the United States illegally, undocumented aliens from the Mayan highlands in Guatemala. Why? Because they were practically wiped out in the early '80s by a really genocidal attack backed by President Reagan, who assured us that the general in charge was a nice guy committed to democracy and so on. So



## Noam Chomsky Interview (cont.)

now the people in the areas that we helped destroy are fleeing for refuge to the United States, and President Obama has sent back [deported] two million, not just from there but from other places. None of this gets discussed except kind of at the margins.

**PW: One of the things, too, is what I think of as a discussion of human rights and slaughters, and I think one of the things that's interesting with Guantanamo seems to be almost a quantitative departure. For over 60 years the United States ran a very successful counter-insurgency program around the world which consisted of kidnapping people, torturing whatever information they had out of them, murdering them and disappearing the bodies. They did this very successfully in the Philippines and Central America, as you know, with less success in Southeast Asia.**

**NC:** Oh, there was plenty of success in Southeast Asia. Tiger cages in South Vietnam were major torture chambers.

**PW:** Sure. Exactly. But at some point, one of the things I find interesting is that with Guantanamo they've publicly acknowledged capturing people, though not always, hence the secret rendition prisons. But at least in Guantanamo they're publicly acknowledging that they've kidnapped people. They've pretty much publicly acknowledged that they tortured them extensively. And continue to torture them. But they aren't killing them and

**dumping the bodies, as they did for decades before that. Do you have any idea why that changed?**

**NC:** Well, there is a difference. Some of the major scholarly work done on torture is done by Alfred McCoy, a historian.

**PW: Yes. We've published his work.**

**NC:** He's pointed out that there is a difference. The U.S. used to delegate torture to subsidiaries. It was sometimes carried out by U.S. operatives, but usually it was kind of delegated. The last couple of years it's been carried out by the U.S. It's pretty much the same thing, as you say, but there's a difference in direct participation. And in fact, he also points out that you could make a case that George Bush's resort to extensive torture is not illegal by U.S. law.

**PW: No. It isn't.**

**NC:** The U.S. never really signed or ratified the torture convention. There is a U.N. torture convention which the U.S. technically ratified, but after rewriting it to exclude the methods that are used by the CIA.

**PW: Actually, the second question I was going to ask you was that the U.S. routinely signs international treaties on issues like torture and prisoners' rights. Then it holds there's no private causes of action for them and, of course, as you're noting right now, it doesn't fully ratify them or creates critical exemptions that prevent enforcement. So my question is, why sign them?**

**NC:** Well, there are two steps. Signing and ratifying. Ratifying is what counts, otherwise nothing happens. But the U.S.

has ratified very few international conventions. I mean, even ones like the rights of a child and things like that; I think the U.S. and Somalia are the only countries that didn't ratify it. And in the very rare cases where the U.S. ratifies a convention, there's a reservation attached. It's called "non self-executing," which means, "inapplicable to the United States." So, for example, the U.S. did finally sign the genocide convention after 40 years, but with a condition: "not applicable to the United States."

That's actually been upheld by the World Court. Because under the Court rules, a country can be prosecuted only if it's accepted the jurisdiction of the Court. When Yugoslavia brought a case against NATO after the bombing in 1999, the United States withdrew from the case. And the Court accepted that because one of the charges was genocide and the U.S. is not susceptible to charges of genocide.

And this runs right through the record. In fact, even in 1946, when the U.S. pretty much led the establishment of the International Court of Justice, the World Court, it added a condition that the U.S. is not subject to any charges under international treaties such as the OAS Charter and the U.N. Charter. And the foundation of the U.N. Charter, of course, bars threats or use of force in international affairs. But the U.S. is not susceptible to that rule. And, in fact, that's kind of tacitly understood. So, for example, President Obama, high officials and others are constantly threatening force against Iran. That's what it means to say "All options are open."

## CALIFORNIA LIFER NEWSLETTER

*Published by Life Support Alliance*

CLN: Comprehensive newsletter mailed every 8 weeks containing state and federal cases, parole board news, statistics, legislation and articles of interest to Lifers and their supporters.

### CLN SUBSCRIPTIONS

Prisoners .... \$30 per year (or 100 stamps)  
Others .... \$90 per year

**Make checks payable to LSAEF**

(Life Support Alliance Education Fund)

**CLN, P.O. Box 277, Rancho Cordova, CA. 95741**

*CLN no longer provides copy service of legal cases, articles or news and materials from the Internet.*

[www.lifesupportalliance.org](http://www.lifesupportalliance.org) (916) 402-3750

**Incarcerated  
Entrepreneur  
Freight Agent  
Training Course  
12 Module Training  
course takes you**

**through everything you will need to  
graduate and be a certified freight agent  
moving freight for commission.**

**Toll Free 1-877-238-9185**

**S.A.S.E. For more information To:**

**Lone Wolf Institute**

**1015 Townsend Dr. Pochontas, AR 72455**

**Payment plans available from \$25.00**

**[lonewolfarkansas@gmail.com](mailto:lonewolfarkansas@gmail.com)**



PW: Sure. And every other country in the world, too.

NC: Well, they can do what they want, but if the U.S. were brought to the Court under that charge, they would appeal that it's not applicable. And, in fact, that was done. Nicaragua brought the United States to the World Court.

PW: For the mining of its harbors.

NC: Well, that was what the final charge was, because the main charges were thrown out by the World Court since they were charges of violations of the Organization of American States treaty against intervention. But the Court pointed out you can't charge [under the OAS treaty]. The U.S. is free from that.

PW: And, obviously, I think for *Prison Legal News* readers sitting in prison the idea that you're only susceptible to a criminal court's jurisdiction if you agree to it sounds like a pretty good deal.

NC: A pretty good deal. But, of course, if we go back to Guantanamo, the torture at Guantanamo was horrible. But it's kind of standard in American prisons.

PW: Actually, it is. When Abu Ghraib first happened, one of the things I've no-

ticed over the many years of publishing *Prison Legal News* is that human rights abuses that occur overseas will get a lot of American media attention. But when the same abuse occurs in American prisons, being done by American officials to Americans, it gets very little attention or is largely ignored.

NC: It gets nothing. Take isolation. The U.N. and other authorities consider that torture. And, in fact, as is known, a short amount of [solitary confinement] drives people completely crazy.

PW: And we've done this for several hundred years.

NC: Yes. But that's standard in America, in American prisons. Almost total isolation for prisoners if they want to, and other treatment, too. There's a general principle that if we carry out a crime, it doesn't happen.

PW: Or it's not a crime.

NC: Either it's not a crime, or it doesn't happen. It literally doesn't happen. And that's true of the media. It's largely true of scholarship.

PW: Do you believe that Americans have fewer or more rights vis-à-vis state

power than the citizens of other industrialized countries?

NC: We do, in fact. It's an unusually free country. Despite all of these crimes, which are real, it is nevertheless quite a free country for people who are relatively privileged. Not if you're a black kid in the slums of Boston. But if you're, say, living where we're talking now, you've got lots of rights. In many respects, more so than other countries. For example, freedom of speech, which is after all a crucial right, is protected in the United States to an extent beyond maybe any other country. Certainly other western countries.

PW: I find it ironic that you say that because our organization is involved right now, for example, ... we're going to trial in Georgia to protect our right to send prisoners letters where the jail bans all books and magazines. They only allow prisoners to send and receive postcards. And it's ironic in the age of the Internet, we're defending a 15th century means of communication.

NC: Yes, well, life is complex. Both things are true. The U.S. has set formally high standards for protection of freedom



**JailCallsUSA**  
**\$9.95** per month  
**\*UNLIMITED JAIL CALLS\***  
**"WE BEAT ALL OUR COMPETITORS"**  
**SWITCH TO US TODAY!!**  
No Contracts  
No Credit Checks  
No Equipment to buy  
**LOWER THE CALL RATES FOR:**  
GLOBAL TEL LINK  
SECURUS  
V-CONNECT  
PAYTEL  
ICSOLUTIONS  
VAC  
PLUS MORE  
**FEDERAL \* STATE \* COUNTY**  
SAME DAY ACTIVATION - NO PER MINUTE CHARGES ON OUR END. JUST \$9.95 A MONTH!  
**GET A LOCAL NUMBER TODAY**  
**888-776-2012**  
**www.JailCallsUSA.com**  
Online Payments Accepted **PayPal** 



**ORDER THE NEW PRISON OFFICIAL CATALOG - ONLY \$10**  
**PRISON OFFICIAL**  
**INMATES #1 RECOMMENDED**  
**ISSUE#1 OR ISSUE#2**  
**5 FREE HOT MODEL PHOTOS INCLUDED WITH PURCHASE!**  
**CORRECTIONAL FACILITY APPROVED**  
**GET MAIL**  **DONT DELAY**  
**ORDER THE NEW PEN PAL LIST**  
**OF 50 REAL ADDRESSES TO**  
**FEMALES WAITING TO CORRESPOND**  
**TO PRISONERS**  
**RECENT PHOTOS INCLUDED!**  
**SEND \$49.95**  
  
Inmates post your profile on our Pen Pal website  
**www.PrisonOfficial.com**  
2 year membership - Send \$30  
250 word limit send S.A.S.E for return of your photo  
**Send Facility Checks/Money Orders To:**  
**MUST ADD \$2 S/H**  
**TO ALL ORDERS**  
**PRISON OFFICIAL**  
**P.O. BOX 1427**  
**WARRENVILLE IL 60555**



## Noam Chomsky Interview (cont.)

of speech, and they are pretty well implemented to the extent that you have a degree of privilege. Prisoners in Georgia are down at the opposite end. They don't gain the rights.

**PW: Okay. The past 40 years have seen a massive increase in the U.S. prison population. The U.S. now imprisons more people than any other country in the world ever has, even including, you know, the Soviet Union at the height of the collectivization in the 1930s, even Nazi Germany. In your view, what has led to the rise of mass imprisonment in the United States?**

**NC:** Primarily the drug war. Ronald Reagan, who was an extreme racist, barely concealed it under his administration. There had been a drug war but it was reconstituted and restructured so it became basically a race war. Take a look at the procedures of the drug war beginning from police actions. Who do you arrest? All the way through the prison system, the sentencing system, even to the post-release system.

And, here, Clinton was involved. Taking away rights of former prisoners, say, to live in public housing and so on. The lack of any kind of rehabilitation. The impossibility of getting back into your own community, into a job, essentially it demands recidivism. So there's a system in place, mostly directed against black males – although by now it's also African-American women, Hispanics and so on – but it's overwhelmingly been black males, which essentially criminalizes black life. And it has led to a huge increase in incarceration and essentially no way out.

It started with the Reagan years and goes on right up to the present.

**PW: And what do you think is the basis for that?**

**NC:** Well, it's kind of striking. First of all, it has a historical parallel which is worth thinking about. After the Civil War there were Constitutional amendments that freed slaves. And there was a brief period, roughly ten years, in which freed slaves had formal rights.

**PW: Right, Reconstruction.**

**NC:** The Reconstruction period. And it was not insignificant, like you had black legislators and so on. After the Reconstruction period, roughly a decade, there was a north-south compact which effectively permitted the former slave states to do essentially what they liked, and what they did was they criminalized black life. So, for example, if a black man was standing on a corner he could be accused of vagrancy and charged some fee which he couldn't pay, so he went to jail. If he was looking at a white woman the wrong way, somebody claimed attempted rape, you know. A bigger fine. Pretty soon they had a very large part of the black population – black male, mainly – in jail. And they became a slave labor force.

A large part of the American Industrial Revolution was based on slave labor in the post-Civil War period. And for U.S. steel and mining corporations and others, it was a wonderful labor force. I mean, much better than slavery. Slavery is a capital investment; you've got to keep your slave alive. [But] you can pick them up from the state system for nothing. They're docile. They're obedient. They can't unionize. They can't ask for anything. I mean, we're familiar with the chain gangs, but that's only the agricultural aspect of it. There was also an industrial as-

pect. This went on almost until the Second World War when there was a demand for free labor for the war industry. And we're essentially reconstituting it.

**PW: Well, we've reported extensively on prison slavery in both the former, the older types as well as the modern ones. *Prison Legal News* has broken some of the major stories on that, but I think one of the bigger impacts now isn't the prisoners working. It's not the 5,000 prisoners working for private corporations or the 60,000 working for prison industries. It's the 2.3 million who aren't working at all. That's the impact on labor markets.**

**NC:** Yes. But that's the difference between now and the latter part of the 19th century. The latter part of the 19th century was a period of the Industrial Revolution. Now it's quite different. It's industrial anti-revolution.

**PW: Or devolution.**

**NC:** In fact, what's really happening is this is a superfluous population. A lot of the working class is basically superfluous at a time when multi-national corporations can shift their production operations to northern Mexico or Vietnam or somewhere. And the black population has never escaped the effects of slavery; I mean, the first slaves came to the United States in the early 17th century. By 1620, there were slaves. And the effect of slavery has never been overcome, in all sorts of ways, so the most superfluous population is the black male population. Fine. So we stick them in prison. Get rid of them.

**PW: One of the things, too, as you say this, there's obviously a number of black, racial minority political organizations in this country, and for the most part they've all been pretty silent about criminal justice policies over the past 40 years. If you**

## Pen Pals for Prisoners

Your ad on the Internet worldwide:

One year for \$9.95. Mail name &

address for FREE order form or online:

[www.PrisonerPal.com](http://www.PrisonerPal.com)

PO Box 19689

Houston, TX 77224



[chiang-lin.com](http://chiang-lin.com)

Law Office of

**TIMOTHY C. CHIANG-LIN, PLLC**

Representing Individuals Sexually Abused  
in Washington State's Foster Care, Group Home,  
City, County Jail and Prison

**2155 112th Ave NE, Bellevue, WA 98004**

**[tim@chiang-lin.com](mailto:tim@chiang-lin.com)**

look at a lot of the major organizations like the NAACP, the Urban League, folks like that, they've been pretty silent on criminal justice issues, and today we have President Obama, who obviously is black. So is our Attorney General. And, you know, while the Attorney General has made some noises on criminal justice issues, if you look at actual practices, nothing's really changed. So to an extent it seems that the political black community has largely been silent or supportive of mass incarceration.

NC: Well, yes. They have their own reasons. But there has been progress in civil rights which for the more privileged sector of the black community has meant more rights. And while I don't like to criticize them – as I said, they have their own reasons – I can see why they might want to try to expand the range of rights that they've achieved and not take on issues that would be unacceptable to the ruling groups.

Take a look at what happened to Martin Luther King, for example. It was very striking. When you listen to the oratory on Martin Luther King Day, it typically ends with his "I have a dream" speech in

Washington, in 1963. But he didn't stop there. He went on to the north. He went on to northern racism, to class issues, urban problems in Chicago, then he was assassinated supporting a public workers' strike. That part of his life has been kind of wiped out. In fact, he lost his northern liberal popularity at that point. As long as he was attacking racist sheriffs in Alabama it was acceptable. When he started talking about racist and class-based oppression in the north, that was beyond the limits.

After all, when he was killed he was on his way to organizing a party of the poor. Not of the blacks. Of the poor. And that's beyond the pale when you do that. So, how much this kind of understanding resonates in the minds of black leadership I don't know, but they can't be oblivious to the phenomenon.

**PW: And I guess one of the things, too, it's not just the black leadership of civil organizations, but we pretty much have a bipartisan consensus on mass imprisonment. I think it's like U.S. foreign policy, just like it has a bipartisan consensus. And we can see that over the past 40 years, to use your slavery analogy,**

**looking back to recent modern history of 1980 or so, no one law at a time but thousands of laws every year around the country have led to mass imprisonment. There's never been one sweeping law, for example. But within mainstream political parties there's been no opposition to mass incarceration, whether it's mandatory minimums, draconian prison conditions or whatever. And why is there, for lack of a better term, mass consensus within the political elite and within the legislative bodies of this country on mass imprisonment?**

NC: We're talking about a period of kind of a major neoliberal assault on the population which had all kinds of effects. One of them is that both political parties drifted to the right. There used to be a quip that the United States is a one-party state, the business party, which has two factions, the Democrats and the Republicans. It's not really true anymore. It's still a one-party state, the business party. But it has only one faction, and it's not Democrats. It's moderate Republicans. The contemporary Democrats are what used to be called moderate Republicans.

## Stamps for CASH!

*Great Goods will buy your stamps!*

**70%** of Face Value: Complete books or sheets of Forever Stamps

**65%** of Face Value: Complete books, sheets, or rolls of 45-cent stamps

**60%** of Face Value: Complete books or sheets of high denomination stamps above 45-cent

**Payment sent within 24 hours of receipt.**

**W**E WILL SEND your funds as a money order, electronic payment to anywhere you designate. Great Goods can also send payment to an approved package vendor. Please provide complete name and address of where to send your funds. Also include any required forms or special instructions.

Minimum money order of \$20. • No quantity of stamps too big. • No taped or stapled stamps. • Used, damaged, torn stamps not accepted and cannot be returned. • Stamps MUST be on original postal backing. • Only new stamps accepted. • No singles or partials will be accepted and they cannot be returned.

## GREAT GOODS

PO Box 399, West Chesterfield NH 03466

[www.greatgoods.org](http://www.greatgoods.org)

STAMPS © USPS. ALL RIGHTS RESERVED.

## Noam Chomsky Interview (cont.)

Meanwhile, the Republican Party has just drifted off the spectrum. The distinguished political conservative analyst, Norman Ornstein of the American Enterprise Institute, speaking from the right, describes the contemporary Republican Party as just what he calls a radical insurgency which has abandoned any commitment to functioning as a parliamentary party. It's just dedicated to extreme wealth and power. Period. And it's had to kind of mobilize popular forces of the kind that hadn't been politically mobilized much in the past, which is why you see what you do. But as both parties drifted to the right, yes, you get the consensus on rightwing policies. As I mentioned, Clinton's policies just made the incarceration system even harsher.

**PW: Well, Clinton remains, I think, the worst thing that's happened to American prisoners not just in living memory but in American history. The laws that he passed, the Prison Litigation Reform Act, the Anti-terrorism and Effective Death Penalty Act among them. The elimina-**

**tion of Pell Grants for prisoners to get an education in prison. And, you know, again, it's all happened with bipartisan consensus.**

**NC:** I wouldn't call it bipartisan because we've lost the concept of [two parties]. There was a narrow spectrum of bipartisan division under the framework of the business party, and that's pretty much gone. The only question is, how rightwing are you? And somebody like Richard Nixon would be regarded as a liberal today.

**PW: You know, he had some pretty good ideas, like the Environmental Protection Agency. I wouldn't see that passing today.**

**NC:** In fact, they're attacking it now. The earned income tax credit, OSHA, you know. Nixon's reforms would be considered way off the spectrum now.

**PW: In your view, what's the Obama administration's track record on domestic human rights issues?**

**NC:** Well, I never frankly expected much of Obama.

**PW: Neither did I.**

**NC:** I wrote about him before the primaries even, in 2008, just using his own web

page. But there was one thing that surprised me, and that's his attack on civil liberties. I don't understand it. It's gone way beyond anything I expected, and I don't even think he gets any political gain from it. I just don't understand what's driving it.

**PW: Well, he did campaign as being a better technocratic manager.**

**NC:** Yes, but why the attack on civil liberties? I mean, some of these attacks aren't even discussed much.

**PW: Well, I think if you look at the rise of militarized policing, and that in this country the ruling class is fully geared up for a full-blown counter-insurgency. They barely have protests, much less resistance. It seems like they're just not taking any chances.**

**NC:** That I can understand. But take something like one of the most extreme attacks, which barely gets discussed – the Humanitarian Law Project case. Here's a case where the Obama administration brought it to the courts, went up to the Supreme Court. They won. And what it does is expand the concept of material assistance to terrorism. Like if you're on the terrorist list and I give you a gun, so, okay, I'm complicit. The Obama administration expanded that to advice. To talk. The case in question [involved] a group that was giving legal advice to some group that's on the terrorist list, but the colloquy in the court extends it way beyond that.... That's a tremendous attack on civil liberties.

## LET US HELP GET YOU HOME!

D&D Worldwide Services LLC, is an Inmate Service Provider. We create detailed parole plans and provide parole plan documentation services worldwide. We are a team of Christian Professional Consultants with over 14 years' experience with the prison system. Our services are intended to guide Pro-Se Clients in the "Right Direction" while assisting them during the parole review process. When building your case, we focus on showing the Parole Board a real person, the positive outcome of incarceration, and you to be a favorable candidate for the privilege of parole!

**Full Service (Texas Only)** - Our office will collaborate the details of your case, create into a personalized parole plan with an Interview Request. We will also provide you with the updates of the major occurrences of your file when in review. Services are provided UNTIL an approval is granted or you are released from prison. Effective March 1, 2014 Service fee is \$800.00

**Standard Service (Worldwide)** - Our standard parole plan is approved in ALL STATES where parole is available. Our office will verify your supporters, build your support system, and create into a personalized standard parole plan. Send SASE for a processing form. Effective March 1, 2014 Service fee is \$200.00

*Although the Prison system may only see Prison Numbers...  
We see "Faces" with "Names" with "Loving families" – "We See People"!*

### D&D Worldwide Services, LLC

12337 Jones Rd # 408 Houston, TX 77070

P.O. Box 40081; Houston, TX 77240

Office: (281) 580-8844; Website: [www.myparole.info](http://www.myparole.info)

***Se Habla Español.***

**PENACON.COM**

Helping the incarcerated community  
gain connections around the world!

Post your profile on an easy to  
navigate website for millions of  
viewers to see. Gain new  
penpals and look forward  
to receiving mail!

One Year Ad Only \$35  
Until Release Date Ad \$95

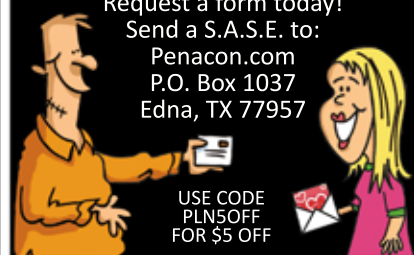
Request a form today!

Send a S.A.S.E. to:

Penacon.com

P.O. Box 1037

Edna, TX 77957



USE CODE  
PLNSOFF  
FOR \$5 OFF



**PW: And the right to free speech or the notion of....**

**NC:** Of free speech. Yes. But it's barely even discussed. Incidentally, the whole concept of the terrorist list is a scandal which should never be accepted. The terrorist list is by executive order. No recourse.

**PW: And no due process right as to how you get on or how you get off.**

**NC:** Nothing. If you look at the record, it's appalling. Like, for example, Nelson Mandela was on it until a couple of years ago. And Saddam Hussein was taken off it because Reagan wanted to support him during the Iraq invasion of Iran.

**PW: One of the things you've written extensively about is the impunity of American client state torturers in other countries, specifically like in East Timor and Indonesia and Central America. And yet here in the United States human rights abusers such as policemen kill unarmed, innocent civilians. In *Prison Legal News*, we report routinely in every issue of our magazine about prisoners who are just outright murdered, directly through use of excessive force by prison and jail staff, as well as much more commonly through**

**medical neglect, through the withholding of adequate medical care. And yet the government officials who do this enjoy virtual impunity. Occasionally there are a few criminal prosecutions. There are civil suits, but government officials have a broad range of immunities. And, again, those only seek money damages and, statistically, are not very successful. So in your view, what accounts for this virtual impunity for American and domestic human rights abusers?**

**NC:** In part, impunity is automatic if it's not discussed. It's barely even discussed. Who talks about it?

**PW: No one. Well, *Prison Legal News* does, but....**

**NC:** Yes, I know, but anywhere near the mainstream there's just no discussion of it. The number of people in the country who even know about it outside the prisoners' families is very slight. And if things are not even a topic of discussion, sure, there's going to be impunity. And all of this reflects the fact that it's simply accepted in the elite culture.

We want to protect ourselves – privileged white people. What happens to the

rest, this is not our business. You know, Guantanamo itself is pretty remarkable. So, for example, the first case that came up under Obama was the Omar Khadr case. He was kidnapped in Afghanistan. He happened to be a Canadian citizen, [and] was a 15-year-old kid who was in a village which was attacked by American troops.

**PW: And, also, it was interesting since when are soldiers on the battlefield deemed to be war criminals when defending themselves on the battlefield?**

**NC:** This is a 15-year-old child. Foreign soldiers are attacking his village. And he's accused of defending it. So he was taken, he was kidnapped. He was put in Bagram, which is worse than Guantanamo, I think, for several years. Then he was moved to Guantanamo. More torture. Finally, he came to trial where he was given a choice. Of course, his lawyers have to make the choice. The choice was, plead innocent and you'll stay in Guantanamo forever, or worse. Or plead guilty and you'll only have to stay for eight more years. And it was public. Did you see any outcry about it? I mean, the very idea of kidnapping a child for the crime of defending his village from aggression, it's

# INMATE TOLL BUSTERS

## Discount Inmate Telephone Calling Services

*Serving: Federal & State Prisons, County Jails and INS Detention Centers Nationwide*

**FREE Same Day Installation, Only \$1.25 Per Month and 6¢ Per Minute**

## PAY ONLY FOR MINUTES YOU USE

**[www.InmateTollBusters.com](http://www.InmateTollBusters.com)**

**Call 24 Hours: 888-966-8655**

We Send Calls To Cell Phones.  
International Call Services Available.  
Call For Rates. Se Habla Español.



## Noam Chomsky Interview (cont.)

so scandalous you don't know what to say about it.

**PW:** Well, we follow Guantanamo fairly closely, and one of the things I think is interesting now is that as soon as the prisoners start talking about being tortured or how they've been tortured, the judges immediately cut off the sound system. And so they can't even talk about the torture they've endured, so it's not even ...you know, we've got multiple layers of impunity.

**NC:** It goes beyond that. So, for example, there's one Australian citizen, David Hill, who was kidnapped in Afghanistan, sold by bounty hunters to the American army. He was held in prison for years in Afghanistan, Bagram and other prisons, and finally Guantanamo. Horrible prison story. Finally, after a lot of negotiations, the Australian government began to intervene slightly. They hadn't done much. And he was released.

He wrote a book about it – a detailed book describing his years of torture, humiliation, how it worked in Afghanistan, what it was like in Guantanamo. Did you read a review of it? It's more than the judges cutting off testimony. It's when material is published in our open, free society, it is deep-sixed. This is not the only case by any means.

**PW:** This is in the context, as you're mentioning atrocities that are occurring

today, that if you look at *The New York Times*, for example, books that are being published, I was recently reading a review not too long ago, by, I think, Applebaum, about human rights violations under Stalin. And it's like, okay, so *The New York Times* is still mulling over human rights violations that happened 70 years ago in the Soviet Union, but nary a word or very little about what's actually occurring today by the American government.

**NC:** And again, I think maybe one of the most striking cases is just the comparison of post-Stalin Eastern Europe with U.S. domains in the same period, like Central America or South America. It's almost not discussed. I mean, some of the things that happened are kind of mind-boggling. Like, for example, right after the murder of the Jesuit intellectuals, something which never happened in Eastern Europe post-Stalin....

**PW:** Even under Stalin, I don't think they were....

**NC:** Well, not that way. I mean, there were plenty of purges and monstrosities.

**PW:** They weren't doing it openly.

**NC:** Yes, but remember, this is under the orders of the high command, very close to the American Embassy. The troops had just returned from further training in the United States and they carried out this atrocity. Okay. A couple of days after that, there was a visit to the United States by Václav Havel, a Czech dissident who suffered under....

**PW:** And became president.

**NC:** Yes. And he addressed a joint session of Congress, and he received massive applause, standing ovations when he praised the United States as the defender of freedom – the defender of freedom that was just responsible for the slaughter of half a dozen of his counterparts in Central America. You take a look at the press after that; the liberal press was just swooning with admiration. Why can't we have wonderful intellectuals like this who praise us for being defenders of freedom, and we've just carried out huge atrocities? Anthony Lewis wrote about how we're in a romantic age, you know, and there's no comment on this. It just passes as if it's normal.

I mean, it's happening right at this moment. Take the crimes going on in Iraq, especially in Fallujah. In Fallujah, there's an insurgent force being attacked by the Iraqi army. There are many laments here in the press about "the pain we suffer after American boys fought to liberate Fallujah. Look what's happening." How did American boys fight to liberate Fallujah? It's one of the major war crimes of the 21st century. You take a look at the record, even as it was just reported in the press.

**PW:** Yes. They flattened the city.

**NC:** They surrounded the city. They cut off food. They allowed people to escape but kept the male population inside, and then they went in and mostly slaughtered them. We don't know how many because we don't count our crimes.

**PW:** And the U.S. has been doing that since at least the 1850s.



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription! Quarterly drawing WINS \$100! (Void in New York) (Last Quarter's winner from Somers, CT.)

**TELL YOUR FRIENDS! ACT NOW!!**

PO Box 2063 • Fort Walton Beach FL 32549  
[www.InmateMagazineService.com](http://www.InmateMagazineService.com)

## Inmate Magazine Service



NC: Well, you know, but now we suffer pain because the American boys fought to liberate it. I mean, there's no comment on this. And, in fact, people here don't know what happened. Or in England, incidentally. There was just a poll in England recently, people were asked how many Iraqis they thought had died during the war. The mean answer was 10,000.

**PW: If you ask them how many Jews died in the Holocaust, everyone knows those numbers.**

NC: Yes, I mean, that's like you know probably 5% of the number. There were some efforts to get the British press to publish something about it. Most were rejected.

**PW: Let me ask you this while we're on the subject of people dying. Why are the U.S. and Japan the only industrialized countries that judicially execute their own citizens through use of the death penalty? And notice I didn't say "kill" because we're going to leave out the extra-judicial murders and death squads which most governments engage in when they're threatened.**

NC: That's true that most countries

have abandoned the death penalty.

**PW: Formally.**

NC: The United States is different, sometimes in interesting ways. I happened to be in Norway a couple of times last year. I was there fortuitously, you remember the Anders Breivik massacre?

**PW: Yes.**

NC: So I was there just at the time when he was captured and identified. And then I was there again at the time when he was sentenced. And it was very interesting to see just the attitudes of the population. The question of the death penalty never arose. He was treated as a human being who had carried out a horrible crime, but he's a human being. At the court proceedings he was permitted to rave and rant on as long as he wanted. The sentence finally was, I think, 21 years.

**PW: Which was the maximum allowed under Norwegian law.**

NC: Which was the maximum, with the possibility of rehabilitation. The circumstances of his imprisonment would seem like a luxury hotel by U.S. standards. And this was accepted, you know? It wasn't bitterly denounced. The attitude was, well,

yes, we have to treat people humanely even when they've carried out a shocking massacre. He killed, I think, what, 70 children? Can you imagine what would have happened here?

**PW: I don't know. It's interesting because I was imprisoned in Washington State, and you have Gary Ridgway who ultimately pleaded guilty to kidnapping, raping and murdering, I think it was 51 women, mostly prostitutes, and ultimately he was sentenced to life without parole. And yet at the same time you have people in Washington State, which has the three-strikes law, on their third offense they're sticking their finger in their pocket, pretending it's a gun and robbing an espresso stand. And they get life without parole. So you can say that the equivalency of the punishment for sticking your finger in your pocket and pretending it's a gun to rob someone is the same whether you're doing that or if you're killing 51 people.**

NC: Well, as soon as you have any contact with the prison system, what you discover is appalling. I don't have to tell you. For example, in one of the demonstra-

**William L Schmidt**  
ATTORNEY at LAW, P.C.

[911CIVILRIGHTS@GMAIL.COM](mailto:911CIVILRIGHTS@GMAIL.COM)

**559.261.2222**

#### **OCTOBER 2013, CALIFORNIA:**

- \$90,000 settlement with CDCR and LA Sheriff
- Confidential settlement with CDCR
- \$600,000 injury recovery
- \$150,000 bad faith settlement
- Federal action dismissed without penalty by agency
- Parole dates granted by BPH

CIVIL RIGHTS-SECTION 1983-FEDERAL AND STATE  
APPEALS AND WRITS- ONLY COMPLEX AND UNIQUE CASES  
PRISON-TRANSFER-DISCIPLINE-VISITING-CLASSIFICATION-HOUSING  
PROP. 36 RE-SENTENCING-3 STRIKES-MEDICAL-PAROLE HEARINGS

-----**OUR CLIENTS GO HOME, HOW ABOUT YOU?**-----

*Please submit a single page summary of your case. Due to the volume, we cannot return documents or respond to all inquires. We are not a low cost or pro bono law firm, but if you want results, contact us.*

**PO Box 25001  
Fresno, CA  
93729**



## Nolo's Plain-English Law Dictionary

\$29.99

Order from

### Prison Legal News

P.O. Box 1151

Lake Worth, FL 33460

561-360-2523

Add \$6 shipping for orders under \$50

[www.prisonlegalnews.org](http://www.prisonlegalnews.org)



## Save on Prescription Eyeglasses & Shades

Send for a **FREE** Catalog  
Money Back Guarantee

**Prism Optical, Inc.**  
10954 NW 7th Ave  
Dept: LN0414  
Miami, FL 33168

Inquiries from Friends  
and Family Welcome  
1-800-637-4104  
[www.prismoptical.com](http://www.prismoptical.com)  
[contact@prismoptical.com](mailto:contact@prismoptical.com)



## Noam Chomsky Interview (cont.)

tions in the early '60s in the south, I was with Howard Zinn. We went to Jackson, Mississippi for a demonstration and at one point we were able to get the police chief to take us through the Jackson prison, which, I should say, by the standards of northern prisons, wasn't too bad. I've been in worse ones. Just, you know, under civil disobedience arrests.

But as we were walking through the halls, of course they were all black men, you know, a child tapped on the bars. He was in the prison and he asked me if he could have a drink of water. So I asked the police chief, "Can I get him a drink of water?" He said, "Okay." When we got back to his office, I asked did he know why that child was in the jail? So he asked some secretary who looked it up, and it turned out that the child had been found in the streets and they didn't know who he was, and they had nothing special to do with him, so they put him in jail.... How much of this goes on?

**PW:** Actually, it still goes on. *Prison Legal News* has reported cases of mentally ill children in Florida who, for lack of any place to care for them, they wind up in the prison system.

**NC:** This kid wasn't even mentally ill. They just didn't know what happened. Maybe he got lost, or whatever it might have been. If it had been a white kid, he wouldn't have been put in jail.

**PW:** Yes. And I think that one of the things we've seen increasingly in the last 30 years – it goes back to what you talk about as a system of class and race control – is that the solution for everything in this country domestically seems to be prison. We may not have public housing for the poor, but we've got prisons. I think it goes back to Governor Cuomo using HUD funds for low-income housing to build prisons, which, in a grotesque way, is low-income housing.

**NC:** Unfortunately true. A lot of it. And the racism is really severe and can't be overlooked. The whole record of white supremacy in the United States is beyond anything that was known.

**PW:** Well, one of the things that I find interesting is that *Prison Legal News* has sued a number of jails around the country, and when you go to jurisdictions like the District of Columbia, Atlanta

and places like Birmingham, we find that the prisoners are still mostly black but the elected officials, the sheriffs, the prosecutors, the mayors, the judges, huge portions of the police force and most of the guards, they're all black too, and the conditions are as bad if not worse than they were under Bull Connor, their white counterparts, 40 or 50 years ago.

**NC:** That's pretty common. If you go to South Africa, remember, the worst crimes were carried out by black forces mobilized by the white government. It's the way coercive systems operate.

**PW:** So, basically, what's more important is who's doing it rather than the color of who's doing it.

**NC:** There are all kinds of reasons why people, individuals do what they do, but it's very standard to co-opt oppressed people to carry out crimes and atrocities for the government. I mean, take, say, England and India. Some of the worst crimes were carried out by Indian troops, Indian Sikh police. In fact, England sent them all over the world to impose imperial rule.

**PW:** One of the things you've talked about is race, and yet we've got two-and-a-half million people in prison and even when we talk about race, no one is claiming that wealthy black people or Hispanics are being herded into prison in significant numbers. So what accounts for the virtual absence of the wealthy from the U.S. prison population?

**NC:** The virtual absence of....

**PW:** Of the wealthy from the prison population? That should be an easy question. Well, they're rich.

**NC:** Do I even have to answer? I'll give you an anecdote. We're living in a pretty well-to-do suburb, right? You can see that when you walk around. Once we were away, the neighbors called and told us there was a broken window in the house. So we came back and took a look, and it turned out somebody had broken in. We called the local police and they came and the first thing they asked us was, "is there a pillowcase missing?" So we looked upstairs, and yes, there was a pillowcase missing. Then they said, "We want you to take a look in your medicine cabinet." So we looked, and yes, somebody had rummaged through the cabinet. And they said, "Well, we know who's doing this. This is teenage kids who live here, and they're going sort of house to house, and if they find one that's easy to



break into, they'll go in and see if they can get drugs." They said, "We know who they are, and we could arrest them. But it's no use. Their parents will have them out of jail tomorrow." That's a typical example.

Or, say, let's go way high up. Last week there were news reports about the fact that Jamie Dimon, CEO of JPMorgan Chase, just had his salary almost doubled. Why? It was in gratitude because he had saved the bank directors from going to prison and they were only fined \$20 billion for criminal activities. Well, \$20 billion, first of all, a lot of it's tax deductible and the rest is kind of a statistical error on their accounts. Now here's a guy who was supervising criminal activities serious enough to cause a \$20 billion fine. Is anybody in jail? What would have happened if this was a kid who robbed a store?

**PW: Yes, that's the joke. Rob the 7-11 for \$20 and get 20 years. And, you know, rob other people of \$20 billion and you get a raise.**

**NC: That's class-based justice.**

**PW: Do you see the criminal justice system, police and prisons, as a tool of class war domestically?**

**NC: Class war and race war. It's been**

very clearly, especially since Reagan; it's very hard to see it as anything other than a kind of race war. There is kind of a reasonably close class-race correlation in the United States, to some extent you can't....

**PW: The racial minorities are disproportionately poor.**

**NC: Yes.** But it goes beyond that. I mean, as I said, from police practices up till post-sentencing, it's sharply racially discriminatory. But, you know, it's a racist country since its origins. I mean, it's even familiar in scholarship. There's a major study of white supremacy by George Fredrickson, a well-known historian. He basically compares South Africa and the United States, but it's really a comparative study. His conclusion is there is nothing anywhere in South Africa or anywhere else to compare with the horror of white supremacy in the United States. Actually, it is so deeply ingrained that none of us even notice it. I mean, for example, take President Obama. He's called a black president. In Latin America he wouldn't be called a black president.

**PW: Right.**

**NC: He'd be called one of the various**

gradations of mixed race. But the United States still has kind of tacitly, not formally, the principle of one drop of black blood. That's deep-seated racism.

**PW: I have a black Cuban friend. We were in prison together, and he once told me that he didn't know he was black until he came to the United States. He said in Cuba he was just Cuban. And then he comes here and....**

**NC: Or mulatto.** There's a whole bunch of gradations of mixed race, but here the racism is extreme. You can see it coming back to Reagan. So he opened his 1980 campaign in Philadelphia, Mississippi. A tiny little town. Why pick that? Nobody knows anything about it except one thing. They murdered civil rights workers there. Did that affect the campaign?

**PW: Yes. Arguably, that's what led to him winning the Presidency.**

**NC: It leads to Obama calling him a great transformative figure, you know.**

**PW: My final question is at this point, after 40 years of mass incarceration with militarization of the police, we've had a massively expanding prison and jail system. We've seen some small dips**

## BETTER JOBS FASTER PAROLE

The only affordable 2-yr and 4-yr college programs available to inmates

New Freedom College is designed for inmates, so our 2-yr & 4-yr programs offer a wide range of classes & majors that can all be completed in prison. At only \$33-\$50/credit, NFC will save you over \$20,000 compared to traditional schools like Adams State (\$165/credit + books = about \$25,000 for 120 cr).

New Freedom has:

- majors you want like Business & Psych
- multi-class & referral discounts
- lots of feedback
- flexibility to meet your needs & openness to your ideas
- low rates that include books, study guides, etc.



4-yr diploma as low as \$3,960

We have a Certificate Program so everyone can participate, plus a monthly payment plan to best meet what you're able to afford.

... Write for info guide & enrollment form:



**New Freedom College**  
1957 W. Burnside St. #1660  
Portland, OR 97209  
NewFreedomCollege.org

## BRANLETTES BEAUTIES

### OUR SIMPLE POLICIES:

SPECIAL REQUESTS ARE NOT PERMITTED AND ALL MODELS ARE OF LEGAL AGE (BOP-FRIENDLY). DUE TO TREMENDOUS TIME AND COST ANSWERING LETTERS, UNLESS YOU ARE PLACING AN ORDER OR A QUESTION REGARDING YOUR ORDER, WE WILL NOT REPLY TO ANY OTHER QUESTIONS. **SASE ARE REQUIRED FOR ANY INQUIRIES OR CONCERNS!**

**YOU AND YOU ALONE ARE RESPONSIBLE FOR YOUR SELECTIONS BEING ALLOWED INTO YOUR FACILITY:**

KNOW YOUR INSTITUTIONS POLICIES AS TO WHAT IMAGE CONTENT IS ALLOWED. RETURNED ORDERS ARE NON-REFUNDABLE. THEY WILL BE HELD FOR 14 CALENDAR DAYS IN ORDER FOR YOU TO SEND SELF-ADDRESSED STAMPED: 3 FIRST CLASS STAMPS PER ENVELOPE, WITH A STREET ADDRESS FOR EVERY 20 PICTURES. ALL RETURNED IMAGES HELD AFTER TWO WEEKS WILL BE RESOLD AND WE WILL RETURN TO OUR STOCK.

**ALL PAYMENTS ARE BY INSTITUTIONAL CHECKS OR U.S. POSTAL SERVICE OR WESTERN UNION MONEY ORDERS.**

THESE PAYMENTS ARE PROCESSED IMMEDIATELY AND SHIPPED IN LESS THAN 3-4 WEEKS. ANY OTHER COMPANY MONEY ORDERS DELAY SHIPMENT 8-10 WEEKS OR UNTIL THAT MONEY CLEARS OUR BANK. YES, WE DEAL WITH PEOPLE THAT ARE, WHILE IN PRISON, STILL TRYING NICKEL AND DIME SCAMS...

**ALL SALES ARE FINAL! EACH CATALOG HAS 84 GORGEOUS LADIES TO CHOOSE FROM HIGH QUALITY PRINTS ON 4X6 GLOSSY PHOTO PAPER**

OUR PRICES ARE SIMPLE:

1-4999 PHOTOS = 0.45 CENTS EACH  
5000+ PHOTOS = 20% DISCOUNT  
1-9 CATALOGS : \$3.00 EACH (+SASE)  
10 CATALOGS: \$25.00+SASE (4 STAMPS)

SHIPPING & HANDLING:

DUE TO VARIOUS PRISON POLICIES REGARDING HOW MANY PICTURES CAN BE SENT IN ONE ENVELOPE, OUR POLICY IS AS FOLLOWS:

01 - 5 PHOTOS---\$1.00 PER ENVELOPE  
06 - 15 PHOTOS---\$1.50 PER ENVELOPE  
16 -25 PHOTOS---\$2.00 PER ENVELOPE

### BRANLETTES BEAUTIES

SELECT YOUR FAVORITE:

WHITE CATALOGS (60 VOLUMES)  
BLACK CATALOGS (60 VOLUMES)  
ASIAN&LATINO CATALOGS (60 VOLUMES)  
PLEASE STATE WHAT STYLE PHOTOS:  
PROVOCATIVE POSES OR NUDE

### FREE CATALOG???

YOU READ IT RIGHT!  
JUST SEND US TWO U.S. FOREVER STAMPS AND A SELF ADDRESSED SELF ENVELOPE AND WE WILL SEND TO YOU ONE NUDE OR BOP-FRIENDLY SAMPLE CATALOG (1 PER CUSTOMER) WITH 84 GORGEOUS GIRLS IN FULL COLOR. ACT NOW AS THIS OFFER WILL NOT BE AROUND LONG!!

BRANLETTES BEAUTIES BAG A RANDOM SELECTION OF 50 OF THE RARE AND EXOTIC \*\*\*YES, FIFTY BEAUTIES ALL POSING JUST FOR YOU!\*\*\* PLUS TWO OF OUR FINEST COLOUR CATALOGS ONLY \$19.95 DID YOU READ THAT RIGHT??? \*\*\*\$19.95\*\*\* YES, ONLY \$19.95 FOR 50 OF BRANLETTES BEAUTIES (PLEASE SPECIFY NUDE OR BOP-FRIENDLY) \*\*\*PLUS\*\*\* TWO OF OUR FINEST COLOUR CATALOGS FREE (YOU PICK A VOLUME) OUR REGULAR SHIPPING AND HANDLING POLICIES APPLY.

**BRANLETTES**  
P.O.BOX 5765  
BALTIMORE, MD  
21282

## Noam Chomsky Interview (cont.)

in [prison population] numbers in the last year or two in the United States. It's too soon to tell if that's just a statistical anomaly.

NC: I don't think it's an anomaly. I think it's just gotten to a point where it's kind of economically unfeasible to maintain it.

PW: My question is, do you see any prospect of permanent change in U.S. prison and criminal justice policies and practices in the near future?

NC: Sure. I mean, if you went back 60 years, you couldn't have predicted the achievements of the Civil Rights Movement.... You couldn't have predicted the women's movement, which completely changed things for half the population. After all, if you go back to the early days of the Republic, under law, women were

not persons. They were property. A woman was the property of her father, transferred to her husband.

And in fact it wasn't until 1975 – not that long ago – that the Supreme Court recognized that women were peers. They had a legal right to serve on federal juries. Prior to that they weren't peers. And that's sort of the core of being a person under law. You couldn't have predicted it. And you can't predict what will happen in the future; it depends how people act. If they become organized, militant, active, the system of coercion is pretty fragile and I think it can crack very quickly.

PW: Do you know who Thomas Mathiesen is? The Norwegian criminologist?

NC: Yes.

PW: One of his quotes that I've always thought about, and this is in the context that I recall when the Soviet Union collapsed and I have a degree in Soviet history, is that no one predicted that one coming.

NC: One of the people who didn't predict it was [former CIA director] Robert Gates, who was a Soviet specialist. He didn't predict it even after it was happening.

PW: And, you know, Mathiesen's comment is that systems of repression appear to be stable right up until the moment they collapse.

NC: That's right.

PW: And so do you think that's possible?

NC: This is a very fragile system here. I think it can crack very easily.

PW: Why do you say it's fragile?

NC: Because there is very little coercive force behind it. By comparative standards, the state in the United States has quite limited capacity for violent repression. I mean, what happens is unacceptable, but again, by comparative standards it is not high.

PW: By comparative standards, are you referring to....

NC: Western countries.

PW: So you would say, for example, in England, that their police and military has more domestic repressive capacity?

NC: I think so. And, in fact, they have much harsher constraints on even things like freedom of speech.

PW: Yes. The libel laws are pretty outrageous.

NC: Horrifying. And how fragile it is, let's take Norway again, which you mentioned. The famous Norwegian criminologist Nils Christie wrote a history of punishment.

PW: I've read it. It's one of my favorite books.

NC: Right. And if you remember, in the early 19th century, Norway was outlandish.

PW: All the Scandinavian countries were.

NC: Horrifying, horrifying crimes. And now they're remarkably humane. Things can change.

PW: Okay. Well, this is one of the few times we end anything on an optimistic note in *Prison Legal News*. Thank you very much. ■

## TYPIING

### SERVICES

Provided since 1998

Specifically designed, with special rates for the incarcerated person.

Black / Color Printing and Copying

SEND A SASE FOR A "FREE" PRICE LIST AND MORE INFORMATION TO:

LET MY FINGERS DO YOUR TYPING

Sandra Z. Thomas (dba)

P O Box 4178

Winter Park, Florida 32793-4178

Phone: 407-579-5563

Special Offer: \$2.00 off first order.

Special offer void after: 12/31/2014

# FreedomLine®

We make it simple.

You reach your loved ones by calling a local number.  
That's a lot cheaper than calling long distance. *It's that simple!*

- We charge \$2.50 per month for the number.
- For Calls to anywhere in the U.S., we charge you 5¢ per minute
- To Mexico - 15¢; to Canada - 11¢, to just about anywhere else in the world - 31¢
- No Contract, No Credit Check, No Setup Fee, No Cancellation Fee, No Early Termination Fee
- Cancel anytime; any money left on the account is refunded

Tell Your Folks to Sign Up at [www.freedomline.net](http://www.freedomline.net)

Or Mail: FreedomLine

PO Box 7 - SCA

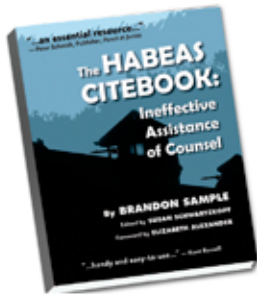
Connersville, IN 47331

Also see our long-running  
Classified Ad in this and every issue

FCC Reg. No. 0021217047

Any time you refer  
a new customer  
and they sign up, you  
both get 300 free minutes!  
Some restrictions apply.  
Details upon request.





## The Habeas Citebook: Ineffective Assistance of Counsel

**\$49.95**

Brandon Sample

ISBN: 978-0-9819385-1-6

Paperback, 224 pages

The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an invaluable resource that identifies hundreds of cases where the federal courts have granted habeas relief to prisoners whose attorneys provided ineffective assistance of counsel.



## Prisoners' Guerrilla Handbook to Correspondence Programs in the United States and Canada, 3rd Edition

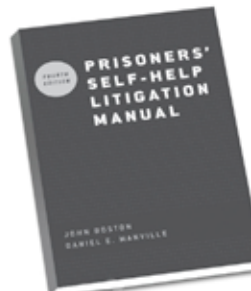
**\$49.95**

Jon Marc Taylor

ISBN: 978-0-9819385-0-9

Paperback, 224 Pages

The greatly anticipated and newly updated third edition of the Prisoner's Guerrilla Handbook to Correspondence Programs in the United States and Canada has finally arrived! Author Jon Marc Taylor's brand new version is the latest in this unique and highly successful guidebook for the prisoner-student. This invaluable tool and how-to handbook provides the reader with step-by-step instructions to find the appropriate education program for correspondence high school, vocational, paralegal, undergraduate, and graduate courses offered in the U.S. and Canada today.



## Prisoners' Self-Help Litigation Manual, 4th Edition

**\$45.95**

John Boston & Dan Manville

ISBN: 978-0-1953744-0-7

Paperback, 960 pages

Prisoners' Self-Help Litigation Manual, in its much-anticipated fourth edition, is an indispensable guide for prisoner litigants and prisoner advocates seeking to understand the rights guaranteed to prisoners by law and how to protect those rights. Clear, comprehensive, practical advice provides prisoners with everything they need to know on conditions of confinement, civil liberties in prison, procedural due process, the legal system, how to actually litigate, conducting effective legal research, and writing legal documents. It is a roadmap on how to win lawsuits.

- ☐ Habeas Citebook,  
Ineffective Assistance of Counsel  
\$49.95
- ☐ Prisoners' Guerrilla Guide to  
Correspondence Programs  
3rd edition  
\$49.95
- ☐ Prisoners' Self-Help  
Litigation Manual  
4th edition  
\$45.95

**Shipping included in all prices**

**Order by mail, phone, or on-line.** Amount enclosed \_\_\_\_\_

By: ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_ ZIP \_\_\_\_\_

PUBLISHED BY

**PRISON LEGAL NEWS**  
Dedicated to Protecting Human Rights

PO Box 1151 • Lake Worth, FL 33460  
Tel 561-360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

## From the Editor

by Paul Wright

**T**HIS MONTH'S INTERVIEW WITH NOAM Chomsky is part of *PLN*'s ongoing series of interviews with notable people who have diverse views of the U.S. criminal justice system. Prior interviews have been conducted with well-known actor Danny Trejo, media mogul and millionaire Conrad Black, and wrongfully convicted former prisoner Jeff Deskovic. We hope that these interviews serve to further what passes for discussion and debate on this country's criminal justice system in general and prisons in particular.

We still need to expand our circulation in order to keep our subscription rates as low as possible; since most publishing-related costs are fixed, the higher our circulation the lower our per-issue expenses for things like printing, postage and layout, which helps keep our costs – and thus our subscription rates – low.

How can you help? First, you can subscribe to *PLN* for four years and get a copy of *The Habeas Citebook: Ineffective Assistance of Counsel* for free! This \$49.95 value is yours if you subscribe for four years or extend your existing subscription for four years. Second, if you know someone who would benefit from *PLN*, purchase a gift subscription for them. *PLN* makes a great gift, especially for friends or family members who are incarcerated.

If you write to *PLN*, please try to be as concise as possible as our office staff is limited and it saves time if you can let us know the purpose of your letter in the opening paragraph. We are always interested in reporting lawsuit wins by prisoners, including verdicts, settlements and judgments, so let us know when you prevail in a case. Informing us that you have filed a lawsuit is not useful until there has been a ruling on the merits, at a minimum.

Lastly, look in this issue of *PLN* for

full-page ads for the Washington Prison Phone Justice Campaign and how you can take action on prison phone contracts in other states that are up for renewal or rebids. *PLN* and our parent organization, the Human Rights Defense Center, continue to advocate for lower phone rates and reform of the prison phone industry.

Enjoy this issue of *PLN* and please consider renewing your subscription or purchasing gift subscriptions for others who are interested in criminal justice-related issues. ■

## \$2.25 Million Jury Verdict against LCS in Texas Prisoner Death Suit

by Matt Clarke

**O**N OCTOBER 24, 2012, A FEDERAL JURY in Texas awarded \$2.25 million to the estate and survivors of a prisoner who died at a facility operated by LCS Corrections Services (LCS), after finding the company was 100% at fault. The district court subsequently reversed its dismissal of § 1983 claims against LCS and granted a new trial as to those claims.

Mario A. Garcia was incarcerated at the Brooks County Detention Center (BCDC) in Falfurrias, Texas, owned and operated by LCS, when he died of a seizure on January 12, 2009. After Garcia was booked into BCDC, his wife delivered a supply of clonazepam, a prescription anti-anxiety medication he had been using for years, to the facility. BCDC officials received the medication but did not give it to Garcia because they allegedly had a policy of refusing to allow prisoners to take any controlled substances, even bona fide prescription medications.

Garcia began shaking badly later that day. He was taken to the emergency room, treated and returned to BCDC. The prison's contract physician, Dr. Michael Pendleton, saw Garcia twice – the last time on January 8, 2009. After the second visit with Dr. Pendleton, Garcia's condition deteriorated rapidly; he was admitted to the prison's medical unit with uncontrollable shaking on January 10 and remained there until he had a seizure and died two days later.

Garcia's estate, widow, son and parents filed a civil rights action pursuant to 42 U.S.C. § 1983 in federal court that alleged

failure to provide adequate medical care plus state law claims of wrongful death and gross negligence. Garcia's father died a few months prior to trial, after which his mother agreed to a confidential settlement.

The district court had previously dismissed the § 1983 claims against LCS, finding that because Garcia was a federal prisoner the company was acting under color of federal law – and § 1983 claims only apply to deprivations of rights under color of state law.

At trial on the plaintiffs' remaining claims, experts testified that Garcia could have been saved had he been taken to a hospital on January 10, and might not have had the seizure at all had he not been denied his medication. LCS named Dr. Pendleton as a responsible third party and claimed he was 75% at fault. The jury found that neither Pendleton nor Garcia was at fault, but rather LCS was 100% responsible for Garcia's death.

The jury awarded Garcia's estate \$500,000 for personal injury and past pain and suffering. His widow received a total of \$500,000 in damages, and the jury awarded Garcia's son \$1.25 million for loss of companionship and mental anguish. The total award against LCS was \$2.25 million plus prejudgment interest at a rate of 5%.

On March 25, 2013, Garcia's widow filed a motion for a new trial on the § 1983 claims that had been dismissed, noting that another federal court in the Southern District of Texas

### Corcoran Sun

Full Color Prison Yard Monthly  
News ♦ Entertainment ♦ Resources

**3 Month Special Subscription**

**\$5 or 20 FCS Stamps**

#### COLOR NEW 18 PAGES

Expanded full color format with exciting episodes of thrilling novels and sexy pics. Many how-to articles on writing, art and health. Filled with entertainment: puzzles, trivia, jokes, poetry... Submit your writing, art, poetry etc. See your submission, name and contact info in print.

**Special 6-Issue Subscription (\$10 or 40 FCS stamps)**

**Special Year Subscription (\$20 or 80 FCS stamps)**

Payments to: Freebird Publishers  
Box 541– Dept. BK, North Dighton, MA 02764  
[www.FreebirdPublishers.com](http://www.FreebirdPublishers.com)  
[Diane@FreebirdPublishers.com](mailto:Diane@FreebirdPublishers.com)





had found LCS was a state actor because it derived its authority to operate a prison from the State of Texas, even though the facility housed federal prisoners.

The district court agreed, reversing its

dismissal of the § 1983 claims and granting the motion for a new trial as to those claims against LCS. The new trial remains pending; the plaintiffs are represented by Corpus Christi attorneys Craig Henderson

and Kathryn A. Snapka. See: *Garcia v. LCS Corrections Services*, U.S.D.C. (S.D. Tex.), Case No. 2:11-cv-00004. ■

Additional source: [www.verdictsearch.com](http://www.verdictsearch.com)

## Ohio: Attorney General May Not Increase Sex Offender's Registration Requirements

**I**N APRIL 2013, AN OHIO APPELLATE court ruled that a sex offender, who was required by virtue of a California conviction to register his address annually for ten years, could not subsequently be indicted, after moving to Ohio and being reclassified under the Adam Walsh Act, for failing to register every 90 days.

Ansuri Ameem was convicted in California of sexual assault and pandering. Classified as a sexually-oriented offender under the former Megan's Law, Ameem was required to register his address annually for ten years.

In July 2007, after moving to Ohio, that state's attorney general reclassified Ameem as a Tier III offender under the Adam Walsh Act. The reclassification sub-

jected Ameem to an increased obligation to register – specifically, every 90 days for life. Ameem failed to register as required and was indicted in July 2010.

After unsuccessfully moving to have the indictment dismissed on grounds that the Ohio attorney general's reclassification was unconstitutional, Ameem pleaded no contest to failing to register.

On appeal, the Eighth Appellate District of the Court of Appeals held that the attorney general's reclassification of Ameem from Megan's Law to the Adam Walsh Act was invalid. Relying on Ohio Supreme Court precedent, the appellate court found that the reclassification violated the separation of powers doctrine because it would allow the executive branch to review

or overrule a decision made by the judicial branch.

The Court of Appeals further noted that Ameem's case was not affected by the Ohio Supreme Court's decision in *State v. Brunning*, 2012 Ohio 5752, 983 N.E.2d 316 (Ohio 2012), which held that "despite an offender who was originally classified under Megan's Law being wrongly reclassified under the Adam Walsh Act, the state could still maintain a prosecution for a violation of the reporting requirements as long as the alleged violation also constituted a violation of Megan's Law."

Accordingly, Ameem's conviction for failure to register was reversed. See: *State v. Ameem*, 2013 Ohio 1555 (Ohio Ct. App. 2013); 2013 Ohio App. LEXIS 1448. ■

**ColdCrib**  
#1 JAILHOUSE CATALOG  
ISSUE #3 OUT NOW!  
3 FREE Non-Nude PHOTOS INCLUDED!  
ONLY \$10  
www.coldcrib.com

THE TRUTH ABOUT SAVING ON JAIL CALLS  
LEARN HOW TO GET FEMALE COMPANIES ON THE OUTSIDE  
"CORRECTIONAL FACILITY FRIENDLY"

**WITH PURCHASE**  
INMATES MUST SEND \$10  
TO GET YOUR OWN MULTI-PAGE  
CATALOG/MAGAZINE TO ORDER  
HUNDREDS OF LOVELY LADIES PHOTOS  
& OTHER SERVICES FOR THE INCARCERATED

**GET MAIL FROM FEMALE PENPALS**  
GET LISTED ON OUR PENPAL SITE  
www.COLDCRIB.com  
Send your photo and info along  
with \$30 for 1 FULL year membership  
OR \$30 for Pen-Pal List of up to 50 addresses  
of our registered female PenPals

**ColdCrib communications**  
INMATES CALL CELL PHONES  
\$17/mo Unlimited Calls  
+ \$15 ONE TIME Activation Fee  
Federal, State, County & Local Facility Inmates  
Local Number Provided Same Day!

**NOW INMATES CAN ORDER THEIR OWN NUMBERS!**  
MAKE EVERY CALL HOME A LOCAL CALL  
NO MORE RUNNING OUT OF MINUTES!  
SEND \$3 FOR PHONE PLAN APPLICATION FORM  
OR HAVE YOUR LOVED ONES ORDER ONLINE  
www.ColdCribCommunications.com

**SPECIAL OFFER**  
BEST 4X6 PHOTOS  
VARIOUS BACKSHOTS & POSITIONS  
SET OF 15 (NON-NUDE) SEXY PHOTOS  
ONLY \$16  
MUST ADD \$2 S/H FOR ALL ORDERS

INMATES MUST SEND FACILITY CHECK OR MONEY ORDERS  
COLD CRIB  
PO BOX 682407  
FRANKLIN TN 37069

## Learn The Law!

It's a POWERFUL influence in your life.

Choose education to help yourself and others. Blackstone's Independent Study Paralegal Program offers you the opportunity to be productive while serving time.

- Learn Civil & Criminal Law
- Learn Legal Research
- 110 Years of Legal Training Experience
- Study in Your Spare Time
- Affordable Tuition, Easy Payment Plan

Only  
**\$30.00**  
Per Month

☐ **Yes!** I'd like to learn more ☐ Paralegal Course  
Please rush me FREE course information.

Name \_\_\_\_\_ Doc# \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**Blackstone  
Career Institute**

Your tuition cost covers your entire program including all textbooks, study guides, exam and homework evaluation services, and your certificate.

P.O. Box 3717 • Allentown, PA 18106

# The Inadequacy of Prison Food Allergy Policies

by Jamie Longazel and Rachel Archer

**M**ICHAEL SAFFIOTI WAS ARRESTED ON a misdemeanor marijuana charge and held at the Snohomish County Jail (SCJ) in Washington State. On the morning of July 2, 2012, he arrived at the center of his module where breakfast was being served. Because he had a severe dairy allergy, Saffioti examined very closely the pancake and oatmeal he was given. Video footage obtained by local news agency KIRO-7 showed him discussing his food with guards, servers and fellow prisoners. This was not the first time Saffioti was held at the SCJ, so his allergy was on record. Yet jail staff had brought no special diet trays to his module that morning; they instead simply removed the pancake from his tray and assured him the oatmeal would be safe to eat.

After taking just a few bites, Saffioti began to experience shortness of breath. Video footage showed him approaching a guard's desk, where reports say he asked for his inhaler and to see a nurse. He was given the inhaler but his request for a nurse was denied, and shortly afterwards he was sent back to his cell. Once there, according to a subsequent lawsuit, he pressed his call button and repeatedly asked when the nurse would arrive. By looking closely at the video footage, one can see how he later began jumping up and down in his cell, seeking assistance. Thirty-five minutes later a guard found Saffioti unconscious. After attempts to perform CPR were unsuccessful, he was rushed to a nearby hospital where he was pronounced dead.

Saffioti's tragic death raises many

important questions about food allergy policies in U.S. prisons and jails – a subject that has been relatively overlooked, likely to the detriment of many prisoners. The federal Bureau of Prisons (BOP) estimates that 0.2% to 3.5% of all prisoners suffer from food allergies. And a recent study by the Centers for Disease Control and Prevention reported a 50% increase in food allergies among children since 1997. With approximately 2.2 million people confined in U.S. prisons and jails today, this means prison food allergy policies impact as many as 77,000 prisoners and likely many more in years to come, including some like Saffioti whose allergies are so severe that meal choices can literally mean life or death.

As far as we can tell, there is no reliable data on how common it is for prisoners with food allergies to die or otherwise suffer from unmet dietary needs. We do know that prisoners file a fair number of lawsuits pertaining to food allergies each year. Given the many legal obstacles confronted by those challenging the conditions of their confinement, these cases are likely just the tip of the iceberg. In an effort to shine more light on the issue, we sent public records requests to all fifty states (we received responses from 39), asking about the food allergy policies used in their prison systems.

Three observations become apparent after analyzing these policies. The first is that many are lacking – in some cases, substantially. The implication is that some prisoners likely suffer from food allergies that the facilities at which they are

confined do not recognize. An official in Kansas responded to our inquiry by noting that they “do not have a procedure in place on this subject.” California – whose prison system houses more than 117,000 people (as many as 4,000 with food allergies, if the BOP's estimate is accurate) – has a very vague policy that places limits on the therapeutic diets that physicians are able to order for prisoners. Neighboring Oregon only recognizes food allergies that are “life threatening.” This policy thus excludes prisoners who suffer from soy allergies, for example, a condition that the Mayo Clinic notes is “rarely ... life threatening” but could nonetheless cause substantial discomfort with symptoms that include tingling in the mouth, hives, swelling, abdominal pain, diarrhea, nausea or vomiting.

New Hampshire's policy identifies only certain allergies as “acceptable” – specifically, the “main food allergies (i.e. onion, tomato, egg, and peanut).” Saffioti's severe dairy allergy would not have been recognized under this policy, nor would someone suffering from a wheat or gluten allergy, among many others. Georgia draws a slightly different line between allergies that are acknowledged and those that are not. They “honor the following Food Allergies: Milk, Egg, Wheat, Gluten, Fish/Shellfish, Peanut/Nut, Chocolate, and Tomato.”

The second observation is that even among states that do acknowledge an array of allergies, prisoners face a substantial burden in becoming eligible for alternative diets. Many states require that an allergy be “verifiable and documented,” and that



**INMATE SHOPPER**  
**2014**  
**READERS CHOICE RESULTS**

OVER 100 PRISONER RESOURCES  
NEW! 2014 WINNER  
FREE ADS  
100 TOPS  
LGBT resources  
En Espanol

**EVERY ISSUE CONTAINS:**

- 200 Pen Pal Resources
- 400 Businesses Serving Prisoners
- 200 Non Profit Orgs for Prisoners
- 80 Designer Gift Stores
- Free Ad Space to Sell Your Stuff
- 15 Magazine Sellers
- Sexy Photo Sellers
- and lots of ladies, too, BOP cool.
- Typist & Publishing Services

**CENSORED EDITION AVAILABLE**  
Contains NO Pen Pal or Sexy Photos

Pay to: Inmate Shopper  
P.O. Box 231 • Edna, TX 77957  
PRICE: \$17.99 + \$6 Priority Mail with Tracking #.

**America's Largest Up-To-Date Resources For Prisoners**

**\$14.98 FREE Shipping**

**Bonus! 100 Orgs en Espanol!**

**amazon.com**

Corlinks:  
info@inmateshopper.com





**THE BEST 500**  
**NON PROFIT ORGANIZATIONS**  
For Prisoners & Their Families

THIS IS AMERICA'S ONLY UP TO DATE  
COMPREHENSIVE, PRISON RESOURCE OF NON PROFIT ORGS  
SPECIFICALLY FOR PRISONERS

Indexed by State, Name of Org and Subject  
Find the help and info you need Fast!

Local Resources  
Legal Family Law  
Health & Health Care  
Education/Trade  
Vocational Training  
Financial Services  
Food Services & Products  
Health/Well-Being

How to Use the Directory  
How to Write Letters  
How to Write Letters  
How to Write Letters  
How to Write Letters

“written medical proof” be provided. This means either that prisoners must have had access to allergy tests before their confinement – which for the uninsured can cost hundreds of dollars – or that they be tested while behind bars. In the latter case, the trouble is that some states impose limits on who can be tested for food allergies.

For example, Arizona’s policy stipulates: “Inmates should only be allergy tested when there is sufficient evidence to do so.” This raises concern for those who suffer from allergies where physical symptoms are absent, such as celiac disease. As the National Digestive Diseases Information Clearinghouse points out, “People with celiac disease may have no symptoms but can still develop complications of the disease over time. Long-term complications include malnutrition – which can lead to anemia, osteoporosis, and miscarriage, among other problems – liver diseases, and cancers of the intestine.” In other words, a diet can be doing substantial harm to a prisoner’s body and some existing food allergy policies provide no means by which that harm can be avoided.

At least one state has a policy in place that actually deters prisoners from being tested for food allergies. Kentucky’s policy permits prisoners to take an allergy test, but stipulates that prisoners will be charged for tests that come up negative. One can assume that this is an attempt to root out false claims, but even if it succeeds in doing so, the policy may disaffect those who really do suffer from allergies. As Food Allergy Research and Education points out, allergy tests “do not always provide clear-cut answers” and patients “may have to take more than one test before receiving [a] diagnosis.” Even under the circumstances when all the

hoops are jumped through and prisoners do manage to furnish acceptable “proof” of their allergy, a number of states require continual renewal of such proof, usually every 90 days.

A final observation is that the burden is often on the prisoner to make choices about their food. This is not to say that prisoners with food allergies should not be well aware of their condition and have a firm understanding of how to respond in the event of an allergic reaction, but rather to point out the lack of institutional support for food allergy issues. Choices about what to eat and what to avoid are especially difficult to make when prisoners are served food they did not prepare. Yet some institutions tell prisoners to fend for themselves, often without recognizing how difficult doing so can be.

Take Oregon’s policy, for example: “We encourage inmates to self-select from the line. For example, if an inmate has a peanut allergy and we are serving peanut butter & jelly sandwiches, they may select the meal alternative tray which consists of beans, rice, vegetables, fruits, and bread.” South Carolina’s policy similarly states little more than the obvious: “If an inmate notifies medical staff of a food allergy, the medical staff will instruct the inmate to avoid that allergy in his/her food choices.” Georgia’s policy is that once a prisoner receives a food tray, they are considered compliant. This policy also brings Saffioti’s case to mind, for technically after servers handed him the pancake and oatmeal breakfast tray, he would have been considered compliant and his desperate attempts to learn the contents of the food would have been irrelevant in a lawsuit.

In conclusion, our content analysis of

prison food allergy policies provides cause for alarm. Granted, it is possible that prison staff go beyond what is listed on policy forms in helping prisoners meet their dietary needs. However, given the conditions of confinement that have characterized our nation’s overcrowded prisons in this era of mass imprisonment, we have little reason to be so optimistic. Consider that in the realm of health care, containment has taken precedent over healing, as was recently exposed in California’s sweeping *Brown v. Plata* class-action lawsuit.

Along similar lines, cost cutting rather than nutritional adequacy seems to be increasingly emphasized in the realm of prison food. A recent *Prison Legal News* article, for example, detailed the great lengths that Aramark – a company that contracts with more than 600 correctional facilities – goes through to cut costs. A class-action lawsuit filed by prisoners in Illinois protesting the high amounts of soy in their diet is another example of providing prison food “on the cheap” to the detriment of prisoners’ health. The likelihood that prisoners with food allergies have their needs met is thus diminished as they confront not just a set of inadequate policies, but also a system whose main concern is not their health and well-being. 🍷

*Jamie Longazel is an Assistant Professor of Sociology at the University of Dayton, Ohio. He is co-author (with Benjamin Fleury-Steiner) of the book, The Pains of Mass Imprisonment (Routledge, 2013). Rachel Archer is a Criminal Justice Studies major at the University of Dayton who has research interests in the areas of food allergies, law and prison conditions. They provided this article exclusively for Prison Legal News.*

## MARILEE MARSHALL & ASSOCIATES, ATTORNEYS AT LAW

California State Bar Board of Specialization

**Certified Criminal Law and  
Appellate Law Specialist**

***If you have a California case  
you need a California lawyer!***

**(213) 489-7715**



**State and Federal Appeals and Writs,  
Lifer Parole Hearings and Related Writs**

**29 years of success**

**523 West Sixth Street, Suite 1109**

**Los Angeles, CA. 90014**

**marileemarshallandassociates.com**



# Kitchen Supervisor Gets Prison Time for Sexually Abusing Two Prisoners

**A** CIVILIAN PRISON EMPLOYEE'S SEXUAL abuse of two prisoners at a federal facility in Phoenix, Arizona was made public after an FBI surveillance camera captured the lascivious details of their ménage à trois.

According to a rather explicit criminal complaint filed on August 29, 2012 in U.S. District Court, Carl David Evans, the kitchen supervisor at FCI-Phoenix, traded packs of cigarettes for oral sex with two male prisoners identified only as "J.I." and "E.D." Evans was charged with two counts of sexual abuse of a ward and one count of providing contraband.

Prison officials learned in June 2012 that Evans was "engaged in a sexual relationship" with at least one prisoner, according to FBI Agent Tyler Woods. Investigators hid a video camera in the food storage area in the kitchen where the alleged sex acts were taking place, and recorded Evans' work shifts for an entire week.

Woods then reviewed the video and discovered footage showing Evans, J.I. and E.D. entering the storage area. E.D. was heard asking Evans and J.I. if they were "ready to suck some dick." Evans locked the door, and the trio then had mutual fellatio on top of some food sacks.

E.D., who worked as a cook, told FBI investigators that beginning in April 2012, Evans gave him a pack of cigarettes every two weeks that he sold to other prisoners for

as much as \$150 each. Evans exacerbated the relationship when he became "aggressive physically," according to E.D., asking him to take off his shirt and then proceeding to play with his nipples.

E.D. estimated that Evans performed oral sex on him 15-20 times. Once, E.D. alleged, Evans brought K-Y gel and placed a condom on him, and the men briefly engaged in anal sex before E.D. had a change of heart.

J.I. told investigators that he engaged in oral sex with Evans and E.D. three times, only because he knew that E.D. had access

to food and "benefited from his relationship with Evans," according to the complaint.

Evans pleaded guilty to five of the federal charges in February 2013, and seven other charges were dropped. He was sentenced on July 3, 2013 to 36 months in prison, three years of supervised release and a \$5,000 fine. Evans has since appealed his sentence to the Ninth Circuit. See: *United States v. Evans*, U.S.D.C. (D. Ariz.), Case No. 2:12-cr-01634-SRB. ■

Additional sources: *Arizona Republic*, [www.thesmokinggun.com](http://www.thesmokinggun.com)

## \$15.5 Million Settlement for Mentally Ill Jail Detainee Held in Solitary Confinement

**A** MENTALLY ILL DETAINEE WHO WAS placed in solitary confinement in a New Mexico county jail for nearly two years, without adequate medical or mental health care, accepted a \$15.5 million settlement for violations of his civil rights.

Stephen Slevin, 59, served almost 22 months in solitary confinement between 2005 and 2007 at the Doña Ana County Detention Center in Las Cruces, New Mexico. On January 24, 2012, a federal jury awarded him \$22 million. The award was upheld by a federal judge after county officials challenged it as being excessive, but

Slevin decided in February 2013 to accept a \$15.5 million settlement and end the legal battle without further appeals.

"It has been a long and hard fight to bring Mr. Slevin justice," said one of his attorneys, Matthew Coyte. "This settlement, although very large, does not give back to Mr. Slevin what was taken from him, but if it prevents others from enduring the pain and suffering he was subjected to, then the fight has been worthwhile."

Slevin's ordeal began on August 24, 2005, when he was booked into the jail on charges of driving while intoxicated and

### Support Prison Legal News with these beautiful gifts!

CALL 561-360-2523, MAIL ORDER OR USE WEB FORM

[HTTP://WWW.PRISONLEGALNEWS.ORG/](http://WWW.PRISONLEGALNEWS.ORG/)



### Hand Embroidered Greeting Cards



Made by women prisoners in Cochabamba, Bolivia. Each card is individually made, no two are identical. The prisoners are paid a fair wage for each card and keep 100% of the pay to support themselves and their families. Local fair trade non-profits in Bolivia supply the materials for the cards. **\$6.**

**Hand Made Hemp Tote Bag** All natural hemp tote bag hand made in Vermont with the Prison Legal News logo on both sides, in red and black. Great for carrying books, groceries, and more! Stamped on the inside that no sweatshop, prison or child labor was used in its manufacture. **\$12.**

\$6 shipping and handling for orders under \$50.



receiving or transferring a stolen vehicle.

"He was driving through New Mexico and arrested for a DWI, and he allegedly was in a stolen vehicle. Well, it was a car he had borrowed from a friend; a friend had given him a car to drive across the country," said Coyte.

Slevin had a lifelong history of mental illness. He was found to have suicidal tendencies by former Doña Ana County Detention Center medical director Daniel Zemek. As a result, Slevin was placed alone in a bare, padded cell for a few days, then moved to the medical center and finally transferred to solitary confinement in October 2005. He remained there for the next 18 months.

When he entered the jail, Slevin "was a well-nourished, physically healthy, adult male with a mental illness." On May 8, 2007, he was transferred to the New Mexico Behavioral Health Institute (NMBHI) for a psychiatric review.

According to Slevin's civil rights complaint, when he was admitted to NMBHI he smelled, his beard and hair were overgrown and he had a fungal skin infection. He was also malnourished, weighed only 133 pounds and complained of paranoia, hallucinations, bed sores and untreated dental problems. He was disoriented and clueless to the fact that he had spent the last 18 months in solitary confinement.

Slevin received mental health care at NMBHI, and the reintroduction to human interaction and socialization brought back his alertness and awareness. After only 14 days of treatment, however, Slevin

was returned to the Doña Ana Detention Center where he was again placed in solitary confinement.

As before, his mental health began to deteriorate. The failure of jail officials to act on his requests for dental care forced Slevin to pull his own tooth while in his cell. His toenails "grew so long they curled under his toes," the *Albuquerque Journal* reported.

Slevin was finally released on June 25, 2007 after the charges against him were dismissed. He claimed he had never seen a judge and was placed in solitary confinement with no explanation from jail officials.

Slevin sued for deprivation of his civil rights. At trial, Zemek admitted that he couldn't remember ever having visited Slevin in solitary confinement during the time he worked as the jail's medical director, and accepted responsibility for being the person who was supposed to oversee Slevin's health care.

"There were circumstances beyond my control that contributed to that, my failure. I take the blame, yes," he testified. Zemek also said he had informed county officials that he felt the jail did not have enough medical staffing.

At the conclusion of the six-day trial, the jury found Doña Ana County Detention Center director Christopher Barela liable for depriving Slevin of his constitutional rights to humane conditions of confinement, adequate medical care and procedural due process, awarding Slevin \$3 million in punitive damages.

The jury found Zemek liable for \$3.5

million in punitive damages for the same types of violations, and also found that a municipal policy, implemented by the Board of Commissioners for the County of Doña Ana, resulted in violations of Slevin's rights under the Americans with Disabilities Act as well as various torts, including false imprisonment. The jury awarded \$15.5 million in compensatory damages against the defendants.

The *Las Cruces Sun-News* reported in early 2013 that the County of Doña Ana is responsible for paying \$9.5 million of the settlement, while the county's insurance provider will cover the remaining \$6 million. See: *Slevin v. Board of County Commissioners for the County of Doña Ana*, U.S.D.C. (D. NM), Case No. 1:08-cv-01185-MV-SMV. ■

Sources: *www.huffingtonpost.com*, *Las Cruces Sun-News*, *Santa Fe Reporter*, *Albuquerque Journal*



**APPEALS, POST-CONVICTION,  
HABEAS, § 2255, PAROLE**

**IDAHO ONLY**

Craig H. Durham, Attorney at Law  
910 W. Main Street, Suite 328  
Boise, ID 83702  
[chdlawoffice.com](http://chdlawoffice.com)

#### LAW OFFICES OF

**ELMER ROBERT KEACH, III**



Law Offices of Elmer Robert Keach, III, PC  
One Pine West Plaza, Suite 109  
Washington Avenue Extension  
Albany, NY 12205-5531  
518.434.1718  
[www.keachlawfirm.com](http://www.keachlawfirm.com)

Attorney Bob Keach  
NITA Master Advocate  
Member, Multi-Million Dollar Advocates Forum  
Outside Counsel, Prison Legal News  
National Practice

#### **Experienced Civil Rights Attorney dedicated to seeking justice for those who are incarcerated**

*Custodial Death Cases • Wrongful Arrest and Incarceration  
Medical Indifference Cases • Corrections and Police Brutality  
Sexual Abuse and Assault • Illegal Strip Searches  
Class Actions • First Amendment Litigation (Northeast Only)*

Reasonable Hourly Rates for: Criminal Defense, Appeals,  
Post-Conviction Relief, Habeas Corpus

**WHEN YOU OR A LOVED ONE HAVE BEEN WRONGED,  
YOU HAVE A VOICE.**

Attorney Keach prefers all inquiries by mail to be typed, and limited to five pages.  
DO NOT SEND ORIGINAL DOCUMENTS OR ORIGINAL MEDICAL RECORDS.  
Make sure to exhaust your administrative remedies and comply with state law notice requirements, if applicable, to preserve state law intentional tort/negligence claims.

# Colorado Prisoner who Murdered Guard Gets Life Without Parole

LAST MONTH, *PRISON LEGAL NEWS* reported that the parents of a slain Colorado prison guard did not want the prisoner who murdered him to face the death penalty. Edward Montour, who beat Lima Correctional Facility guard Eric Autobee to death in October 2002, was initially sentenced to death but that sentence was overturned in 2007.

Montour faced the death penalty again in a retrial, but Eric Autobee's parents, Bob and Lola, who now oppose capital punishment, wanted to provide a victim impact statement to the jury urging them not to impose a death sentence.

"A lot of people think because I forgave him [Montour], I don't want to hold him accountable or have him punished," Bob Autobee stated. "That's not true. People that do these things have to be punished, but death is not the answer."

Eighteenth Judicial District Attorney George Brauchler objected to the Autobees' request to provide a victim impact statement, arguing that such statements could only be for punitive and not mitigating purposes. [See: *PLN*, March 2014, p.24].

Before murdering Eric Autobee, Montour was serving a life sentence for killing his 11-week-old daughter, Taylor, which he claimed was an accident when she fell and hit her head. On February 27, 2014, the El Paso County coroner's office changed the cause of Taylor's death from homicide to undetermined, and a group of experts retained by Montour's defense counsel said her injuries were consistent with an accident.

Defense attorneys had intended to argue at trial that Montour's mental illness became worse after he was wrongfully convicted of killing his daughter, culminating in his fatal attack on Eric Autobee in the kitchen at the Lima Correctional Facility.

However, on March 6, 2014, Montour pleaded guilty to murdering Autobee in exchange for a sentence of life without pa-

role; he said he owed the plea to Autobees' parents. Even if he is eventually exonerated in his daughter's death, he still must serve a life sentence for killing Eric Autobee.

"I had to get as much justice out of this situation as I could," Brauchler said in reference to offering the plea bargain to Montour. ■

Sources: *www.kdvr.com*, *Denver Post*

## U.S. Supreme Court: District Courts Can Make Federal Sentences Consecutive or Concurrent to Future State Sentences

ON MARCH 28, 2012, THE U.S. Supreme Court held that a federal district court may impose a federal prison term that is consecutive to an anticipated future state court sentence. In February 2014, the Third Circuit ruled that a district court's ability to impose such a sentence only applies at the time when the federal sentence is imposed.

Monroe Ace Setser was on probation for a drug charge when he was arrested in Texas on a new charge of possession with intent to deliver a controlled substance. After Setser was indicted on the new drug charge, the state moved to revoke his probation. A federal grand jury then indicted him on the federal offense of possession with intent to distribute 50 grams or more of methamphetamine, based on the same incident that had resulted in the new state drug charge.

This did not constitute double jeopardy based on the legal fiction that it is permissible to pursue state and federal charges for the same criminal conduct under the "dual sovereignty" doctrine.

Setser pleaded guilty to the federal charge and was sentenced to 151 months in prison. The federal judge made Setser's sentence consecutive to the sentence he would receive in the probation revocation proceedings, but concurrent with the sentence he would receive for the new state drug charge.

Setser appealed. While his appeal was pending, the state sentenced him to five years in prison for the probation revocation and 10 years for the new drug charge, with both sentences to run concurrent. This made it impossible to implement the federal sentence as ordered by the district court.

### EXECUTIVE CLEMENCY

For Info. On Sentence Reduction through Executive Clemency:

NATIONAL CLEMENCY PROJECT  
3907 N. Federal Highway, # 151  
Pompano Beach, FL 33064  
954-271-2304



(35-Years of Clemency & Parole Assistance)  
(Transfers Under The Int'l Prisoner Treaty)

### Alexander Byrd Optics

Single Vision Transitions eyeglasses

**\$119.95 + S&H**

with Lifetime Frame Warranty

To receive order form and details write to:

2150 Wise St. #4769  
Charlottesville, VA 22905

or have someone go to:

abyrdoptics@gmail.com  
www.abyrdoptics.com

Regardless, the Fifth Circuit Court of Appeals affirmed his federal sentence, holding that the district court had the authority to run a sentence consecutive to a future state sentence that had not yet been imposed, and that the sentence was reasonable even if “partially foiled” by the state court’s decision to make the state sentences concurrent. Setser filed a petition for writ of certiorari in the U.S. Supreme Court, which was granted.

The Supreme Court held that the traditional broad discretion that federal judges enjoy when imposing sentences includes the ability to make a sentence consecutive to an anticipated state sentence, and that such a determination is not left for the Bureau of Prisons to decide. However, in this case the sentence pronounced by the federal judge could not be carried out because the state court had made the probation revocation and new drug charge sentences concurrent.

In such a case, the Supreme Court held that the Bureau of Prisons “ultimately has to determine how long the District Court’s sentence authorizes it to continue Setser’s confinement. Setser is free to urge the Bureau to credit his time served in state court based on the District Court’s judgment that the federal sentence run concurrently with the state sentence for the new drug charges. If the Bureau initially declines to do so, he may raise his claim through the Bureau’s Administrative Remedy Program. See 28 CFR § 542.10 *et seq.* (2011). And if that does not work, he may seek a writ of habeas corpus.”

The judgment of the Fifth Circuit upholding Setser’s federal prison sentence was therefore affirmed. See: *Setser v. United States*, 132 S.Ct. 1463 (2012).

On February 12, 2014, the Third Circuit Court of Appeals applied the ruling in *Setser* to find that while a district court can decide whether to run a federal sentence concurrent or consecutive to a future state sentence that has not yet been imposed, it can do so only at the time of sentencing on the federal charges.

Defendant Michael Sharpe was sentenced to 144 months in federal prison in 2004; he expired his sentence in May 2013 and was remanded to Pennsylvania officials for a parole violation. He then filed a motion in the district court seeking reconsideration of his federal sentence, requesting that

the court run it concurrent with his subsequently-imposed Pennsylvania state sentence.

The district court held it did not have jurisdiction to modify Sharpe’s sentence, which was affirmed on appeal. The Third Circuit found that *Setser* “holds merely that district courts have such authority” at the time the federal sentence is imposed when deciding whether federal sentences are to be made concurrent or consecutive to future state sentences.

The appellate court further noted that

“even if the District Court had been authorized to modify Sharpe’s federal sentence, that is not really what he was asking the court to do. Sharpe’s federal sentence has expired and he is now serving a state-court sentence. Thus, Sharpe is really seeking to modify his state sentence on the ground that it should (or should have) run concurrently with his federal sentence. That is a matter for Pennsylvania authorities, not the federal courts.” See: *United States v. Sharpe*, 2014 U.S. App. LEXIS 2653 (3d Cir. 2014) (unpublished). ■

## Legal Insights Inc.

- **Post-Conviction Specialists (State or Federal Convictions/Pleas, State & Federal Habeas Corpus, [28 U.S.C. § 2254,2255], Coram Nobis, PRP, “Next Friend”, Certiorari, SVP, Sentence Modification, DNA and more).**
- **All 50 States, D.C., Federal District Courts, Federal Courts of Appeal and Supreme Court.**
- **Comprehensive investigative services available.**
- **Expert and specialist services available.**
- **Staff attorney available.**
- **Post Conviction Specialists with over 12 years experience with proven results.**
- **Legal research and case law retrieval services available.**
- **Multi-lingual services available.**
- **FREE initial consultation.**
- **Payment plans available.**

**25602 Alicia Parkway #323**

**Laguna Hills, CA 92653**

**714-941-0578**

**info@legalinsights.org**

**www.legalinsights.org**

A California 501(c)(3) Non-Profit Organization



# Lowering Recidivism through Family Communication

by Alex Friedmann

THERE ARE CURRENTLY 2.2 MILLION people held in prisons and jails in the United States,<sup>1</sup> and an estimated 95% of prisoners currently in custody will one day be released. Based on 2012 data, around 637,400 people are released annually from state and federal prisons.<sup>2</sup>

According to an April 2011 report by the Pew Center on the States, the average national recidivism rate is 43.3%.<sup>3</sup> Based on that average rate, an estimated 276,000 released prisoners can be expected to recidivate each year, many committing new crimes and returning to prison.

This negatively impacts our communities in several ways, including the societal costs of more crime and victimization as well as the fiscal costs of reincarcerating ex-prisoners who commit new offenses – at an average annual cost of \$31,286 per prisoner, according to a 2012 report by the Vera Institute.<sup>4</sup>

Studies have consistently found that prisoners who maintain close contact with their family members while incarcerated have better post-release outcomes and lower recidivism rates.

These findings represent a body of research stretching back over 40 years. For example, according to “Explorations in Inmate-Family Relationships,” a 1972

study: “The central finding of this research is the strong and consistent positive relationship that exists between parole success and maintaining strong family ties while in prison. Only 50 percent of the ‘no contact’ inmates completed their first year on parole without being arrested, while 70 percent of those with three visitors were ‘arrest free’ during this period. In addition, the ‘loners’ were six times more likely to wind up back in prison during the first year (12 percent returned compared to 2 percent for those with three or more visitors). For all Base Expectancy levels, we found that those who maintained closer ties performed more satisfactorily on parole.”<sup>5</sup>

These findings still ring true. An article published in August 2012 in *Corrections Today*, a publication of the American Correctional Association, titled “The Role of Family and Pro-Social Relationships in Reducing Recidivism,” noted that “Family can be a critical component in assisting individuals transitioning from incarceration because family members provide both social control and social support, which inhibit criminal activity.... In contrast, those without positive supportive relationships are more likely to engage in criminal behavior.”<sup>6</sup>

Further, a Vera Institute study, published in October 2012, found that “Incarcerated

men and women who maintain contact with supportive family members are more likely to succeed after their release.... Research on people returning from prison shows that family members can be valuable sources of support during incarceration and after release. For example, prison inmates who had more contact with their families and who reported positive relationships overall are less likely to be re-incarcerated.”<sup>7</sup>

Another Vera Institute report, published in 2011, stated: “Research shows that incarcerated people who maintain supportive relationships with family members have better outcomes – such as stable housing and employment – when they return to the community. Many corrections practitioners and policy makers intuitively understand the positive role families can play in the reentry process, but they often do not know how to help people in prison draw on these social supports.”<sup>8</sup>

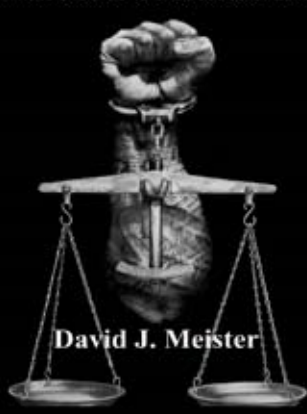
According to research published in *Western Criminology Review* in 2006, “a remarkably consistent association has been found between family contact during incarceration and lower recidivism rates.”<sup>9</sup>

Correctional practices that “facilitate and strengthen family connections during incarceration” can “reduce the strain of parental separation, reduce recidivism rates, and increase the likelihood of successful re-entry,” according to a 2005 report by the Re-Entry Policy Council.<sup>10</sup>

A 2003 study by the Washington, D.C.-based Urban Institute, “Families Left Behind: The Hidden Costs of Incarceration and Reentry,” as revised in 2005, noted: “Research findings highlight the importance of contact among family members during incarceration. Facilitating contact has been shown to reduce the strain of separation and increase the likelihood of successful reunification. Studies comparing the outcomes of prisoners who maintained family connections during prison through letters and personal visits with those who did not suggest that maintaining family ties reduces recidivism rates.”<sup>11</sup>

Also, a 2004 study by the Urban Institute stated, “Our analysis found that [released prisoners] with closer family relationships, stronger family support, and fewer negative dynamics in relationships

**BATTLING THE ADMINISTRATION**  
An Inmate's Guide to a Successful Lawsuit



David J. Meister

Written from a prisoner's perspective, this book is excellent for both the first-time litigant and the old hand, a practical guide for navigating the strange world of prisoner's rights.

- ⇒ Guidance on how to get organized
- ⇒ Tips for investigating and building a case
- ⇒ Spelling and Grammar refresher
- ⇒ Detailed overview of the legal system
- ⇒ Sample complaint and other forms
- ⇒ Covers court rules, evidence, and exhibits
- ⇒ Details on hearing and trial practice
- ⇒ Comprehensive summary of prisoner's rights
- ⇒ Hundreds of citations to controlling case law

## **Battling The Administration**

by, David J. Meister

ISBN: 9781940638034 555 pages

Send check or money order to:

**Wynword Press**

P.O. Box 557

Bonnors Ferry, ID 83805

Include your full Name, DOC#, Institution name and your complete address.

Order online at: [www.wynwordpress.com](http://www.wynwordpress.com)

**Tel(208)267-0817**

**\$34.95**

**Price includes shipping**



with intimate partners were more likely to have worked after release and were less likely to have used drugs.” The study authors, Christy Visser, Vera Kachnowski, Nancy La Vigne and Jeremy Travis, concluded, “It is evident that family support, when it exists, is a strong asset that can be brought to the table in the reentry planning process.”<sup>12</sup>

It is thus abundantly clear that maintaining close family relationships during incarceration results in lower recidivism rates and therefore less crime, which benefits society as a whole. Yet in spite of this clear correlation, corrections officials often do little to encourage contact between prisoners and their family members.

There are three primary forms of communication available to prisoners: letters, visits and phone calls.

With respect to letters, many prisoners are illiterate or functionally illiterate, which frustrates correspondence. A 2007 report by the National Center for Education Statistics found that 39% of prisoners scored “below basic” for quantitative literacy testing, while another 39% scored at only a “basic” level.<sup>13</sup>

Other studies likewise have found high levels of illiteracy or poor written communication skills among prisoners, which makes letter-writing as a means of regular contact between prisoners and their families problematic.

Further, an increasing number of jails are adopting postcard-only policies, whereby prisoners can only receive, and sometimes send, mail in the form of postcards – a very limited means of correspondence. [See: *PLN*, Nov. 2010, p.22]. Such policies place additional burdens on communication between prisoners and their families; *PLN* and other organizations have challenged postcard-only policies in various jurisdictions, including Florida, Tennessee, Oregon, Washington and Michigan. [See: *PLN*, Jan. 2014, p.42; Nov. 2013, p.24; June 2013, p.42; Jan. 2012, p.30; Sept. 2011, p.19].

In regard to visitation, a November 2011 study by the Minnesota Department of Corrections examined recidivism rates for 16,420 ex-prisoners over a five-year period, comparing rates for those who received visits while incarcerated and those who didn’t. The study found that “Any visit reduced the risk of recidivism by 13 percent for felony reconvictions and 25 percent for technical violation revocations, which reflects the fact that visitation generally

had a greater impact on revocations. The findings further showed that more frequent and recent visits were associated with a decreased risk of recidivism.”<sup>14</sup> [See: *PLN*, May 2013, p.1].

However, prison officials often make visitation an unpleasant process, including lengthy waits, onerous searches, restricted visitation times and rigid enforcement of often petty rules. For example, one female attorney said she was told by prison officials that she could not visit a prisoner because her underwire bra set off the metal detector.

After leaving, removing her bra and then returning, she was told she could not visit because she wasn’t wearing a bra.

According to the 2011 Vera Institute study, “Many family members also indicated that prison rules and practices – including searches, long waits, and inconsistent interpretations of dress codes for visitors – can be unclear, unpleasant, too restrictive, and even keep people from visiting again.”

Due to such problematic issues with visitation, and because prisoners are frequently housed at facilities located far from

**PRISON INMATES ONLINE**

Home | Sort Inmates | Photo/Video | Inmate Writings | Community | Services | Forum

**John Inmate #12345**  
Prison Correctional Facility  
123 Any St  
Cell #1 Bed #1  
Anywhere, CA 12345

**Actual Profile Layout**

**GET PEN-PALS by posting YOUR profile ONLINE!**  
\$50 Lifetime Profile  
\$10 Mini Profiles

**BEST VALUE Among Prison Websites**

**SHARE THESE**

PHOTOS | ARTWORK | TATTOO PICS | VIDEOS | LEGAL DOCS

**Our Social Network Includes:**  
twitter | facebook

**For a FREE brochure/application:**  
Send a Self Addressed Stamped Envelope (Size #10) or 2 first class stamps to:  
**PRISON INMATES ONLINE**  
#PLN Brochure  
8033 W Sunset Blvd #7000  
Los Angeles CA 90046

**We cannot send brochures to STATE inmates in:**  
FL, MO, PA, or VA. Message Service available in facilities that allow 3rd party mail. NY State Inmates are prohibited from Message Service.

**Our Message Service**  
let's people send you messages directly through your profile. We collect messages you receive and mail them to you each week. \*Service Not available in all prisons.

*Helping Inmates Since 2000*

**BLOGS POETRY**

## Lowering Recidivism (cont.)

their families which makes in-person visits difficult (federal prisoners, for example, may be held at any federal prison in the United States), phone calls are a primary means of maintaining family contact.

As acknowledged by the largest prison phone company in the nation, Global Tel\*Link: “Studies and reports continue to support that recidivism can be significantly reduced by regular connection and communications between inmates, families and friends – [a] 13% reduction in felony reconviction and a 25% reduction in technical violations.”<sup>15</sup>

Kevin O’Neil, president of Telmate, another phone service provider, agreed, stating, “The more inmates connect with their friends and family members the less likely they are to be rearrested after they’re released.”<sup>16</sup>

When the Federal Communications Commission voted in August 2013 to reduce the cost of interstate prison phone calls nationwide, the issue of rehabilitation and recidivism played a contributing role in the FCC’s decision.

As stated by FCC Commissioner Mignon Cylburn: “Studies have shown that having meaningful contact beyond prison walls can make a real difference in maintaining community ties, promoting rehabilitation, and reducing recidivism. Making these calls more affordable can facilitate all of these objectives and more.”<sup>17</sup>

The FCC’s order imposing rate caps on interstate prison phone calls went into effect on February 11, 2014, though other parts of the order have been stayed by the D.C. Circuit Court of Appeals. [See: *PLN*, Feb. 2014, p.10].

Notably, numerous corrections officials filed objections to the FCC’s plan to impose rate caps, and intrastate (in-state) prison phone rates, which were not affected by the FCC’s order, remain high. Meanwhile, prisons and jails nationwide have received hundreds of millions of dollars in “commission” kickbacks from prison phone companies, and such kickbacks have long resulted in inflated phone rates that create financial barriers to communication between prisoners and their family members. [See: *PLN*, Dec. 2013, p.1; April 2011, p.1].

In conclusion, although research has

consistently found that regular contact between prisoners and their families results in better post-release outcomes and lower recidivism rates, corrections officials have done little to facilitate – and have sometimes deliberately frustrated – such communication with respect to written correspondence, visitation and phone calls.

Investments in prison-based literacy programs and less restrictive mail policies, revising visitation policies to encourage visits by family members, and reducing intrastate prison and jail phone rates would provide prisoners with greater opportunities to maintain close relationships with their families, leading to lower recidivism rates and less crime in our communities.

Few corrections officials seem willing to take such actions, though, which is a strong indicator that reducing recidivism – thus reducing the size of our nation’s prison population and the associated costs – is not one of their priorities. ■

## ENDNOTES

- 1 <http://www.bjs.gov/content/pub/pdf/cpus12.pdf>
- 2 <http://www.bjs.gov/content/pub/pdf/p12tar9112.pdf>
- 3 [http://www.pewtrusts.org/uploadedFiles/ww-pewtrustsorg/Reports/sentencing\\_and\\_corrections/](http://www.pewtrusts.org/uploadedFiles/ww-pewtrustsorg/Reports/sentencing_and_corrections/)

[State\\_Recidivism\\_Revolving\\_Door\\_America\\_Prisons%20.pdf](http://www.vera.org/sites/default/files/resources/downloads/Price_of_Prisons_updated_version_072512.pdf)

4 [www.vera.org/sites/default/files/resources/downloads/Price\\_of\\_Prisons\\_updated\\_version\\_072512.pdf](http://www.vera.org/sites/default/files/resources/downloads/Price_of_Prisons_updated_version_072512.pdf)

5 <http://www.fcnetwork.org/reading/holt-miller/holt-millersum.html>

6 <http://www.aca.org/fileupload/177/ahaidar/Flower.pdf>

7 <http://www.vera.org/files/the-family-and-recidivism.pdf>

8 <http://www.vera.org/sites/default/files/resources/downloads/Piloting-a-Tool-for-Reentry-Updated.pdf>

9 <http://wcr.sonoma.edu/v07n2/20-naser/naser.pdf> (citing other sources)

10 <http://csgjusticecenter.org/wp-content/uploads/2013/03/Report-of-the-Reentry-Council.pdf>

11 [http://www.urban.org/UploadedPDF/310882\\_families\\_left\\_behind.pdf](http://www.urban.org/UploadedPDF/310882_families_left_behind.pdf)

12 [http://www.urban.org/UploadedPDF/310946\\_BaltimorePrisoners.pdf](http://www.urban.org/UploadedPDF/310946_BaltimorePrisoners.pdf)

13 <http://nces.ed.gov/pubs2007/2007473.pdf>

14 <http://www.doc.state.mn.us/pages/files/large-files/Publications/11-11MNPPrisonVisitationStudy.pdf>

15 Petitioners’ Opposition to Petition for Stay of Report and Order Pending Appeal, FCC WC Docket No. 12-375, Exhibit D, page 6 (October 29, 2013)

16 [www.telmate.com/oregon-doc-installation](http://www.telmate.com/oregon-doc-installation)

17 [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2013/db0926/FCC-13-113A2.txt](http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0926/FCC-13-113A2.txt)

## Iowa: Parole Agreement Does Not Constitute Voluntary Consent that Justifies Warrantless Search

**L**AST YEAR THE SUPREME COURT OF Iowa reversed a parolee’s conviction on drug charges, holding that his acceptance of a search condition in a parole agreement did not constitute voluntary consent, and therefore a warrantless, suspicionless search of his car was unreasonable and violative of his rights under the search and seizure clause of the state constitution.

While on parole in 2009, Isaac A. Baldon III was subjected to a search of his person, the motel room where he was staying and his car, all pursuant to a consent-to-search provision in the parole agreement that Baldon, like all Iowa parolees, was required to sign as a prerequisite to being released on parole. The police found a large quantity of marijuana in Baldon’s car and charged him with drug-related offenses.

Baldon moved to suppress the mari-

juana from the search of his vehicle, arguing that his signing of the parole agreement did not constitute voluntary consent to searches of his person or property. The district court denied the motion and found him guilty of the charges.

On appeal, the Iowa Supreme Court reversed the judgment. Analyzing the issue of consent on state constitutional grounds, the Court concluded, in a thoughtful opinion, that the standard search provision contained in Baldon’s parole agreement did not represent a voluntary grant of consent to searches. Notably, this finding rested on provisions in the Iowa constitution, and the Supreme Court noted that many courts in other jurisdictions “have concluded that consent-search provisions in probation agreements constitute a waiver of search-and-seizure rights.” See: *State v. Baldon*, 829 N.W.2d 785 (Iowa 2013). ■



Stay in touch with a good Magazine!

# Get 5 Full One Year Subscriptions - **ONLY \$20!**

+ \$3.99 p/h  
"BEST DEAL ON THE POUND!"

Check your **5** magazines  
and underline three backup choices (in case of unavailability)

- |                                                             |                                                            |                                                        |
|-------------------------------------------------------------|------------------------------------------------------------|--------------------------------------------------------|
| <input type="checkbox"/> 4 WHEEL DRIVE & SPORT UTILITY (12) | <input type="checkbox"/> FLEX (12)                         | <input type="checkbox"/> PLANE & PILOT (12) NR*        |
| <input type="checkbox"/> ALLURE (12)                        | <input type="checkbox"/> FLORIDA SPORT FISHING (6)         | <input type="checkbox"/> POPULAR PHOTOGRAPHY (12)      |
| <input type="checkbox"/> AMERICAN PHOTO (6)                 | <input type="checkbox"/> FLYING (12)                       | <input type="checkbox"/> POPULAR SCIENCE (12)          |
| <input type="checkbox"/> ARTHRITIS TODAY (6)                | <input type="checkbox"/> FOUR WHEEL & OFF ROAD (12)        | <input type="checkbox"/> PREDATOR EXTREME (6)          |
| <input type="checkbox"/> AUTOMOBILE (12)                    | <input type="checkbox"/> FOUR WHEELER (12)                 | <input type="checkbox"/> PREVENTION (12)               |
| <input type="checkbox"/> BACKPACKER (9)                     | <input type="checkbox"/> FREESKIER (6)                     | <input type="checkbox"/> RED BULLETIN MAGAZINE (12)    |
| <input type="checkbox"/> BETTER HOMES & GARDENS (12)        | <input type="checkbox"/> GLAMOUR (12)                      | <input type="checkbox"/> REDBOOK (12)                  |
| <input type="checkbox"/> BICYCLING (11)                     | <input type="checkbox"/> GOLF DIGEST (12)                  | <input type="checkbox"/> ROAD & TRACK (10)             |
| <input type="checkbox"/> BLACK ENTERPRISE (12)              | <input type="checkbox"/> GOLF TIPS (7)                     | <input type="checkbox"/> SAVEUR (9)                    |
| <input type="checkbox"/> BOATING (10)                       | <input type="checkbox"/> GOLFWEEK (40)                     | <input type="checkbox"/> PARENT & CHILD (8)            |
| <input type="checkbox"/> BON APPETIT (12)                   | <input type="checkbox"/> HARPERS BAZAAR (10)               | <input type="checkbox"/> SELF (12)                     |
| <input type="checkbox"/> BOWHUNT AMERICA (6)                | <input type="checkbox"/> HOT BIKE (12)                     | <input type="checkbox"/> SEVENTEEN (10)                |
| <input type="checkbox"/> BOWHUNTING WORLD (9)               | <input type="checkbox"/> HOT ROD (12)                      | <input type="checkbox"/> SHAPE (12)                    |
| <input type="checkbox"/> BRIDAL GUIDE (6)                   | <input type="checkbox"/> HOUR DETROIT (12)                 | <input type="checkbox"/> SIEMPRE MUJER (6)             |
| <input type="checkbox"/> CABELA'S OUTFITTER JOURNAL (6)     | <input type="checkbox"/> HOUSE BEAUTIFUL (10)              | <input type="checkbox"/> SKI MAGAZINE (6)              |
| <input type="checkbox"/> CAR & DRIVER (12)                  | <input type="checkbox"/> INC (12)                          | <input type="checkbox"/> SLAM (10)                     |
| <input type="checkbox"/> CAR CRAFT (12)                     | <input type="checkbox"/> INSTRUCTOR K - 8 (6)              | <input type="checkbox"/> SNOWBOARD (4)                 |
| <input type="checkbox"/> CBS WATCH! MAGAZINE (6)            | <input type="checkbox"/> ISLANDS MAGAZINE (8)              | <input type="checkbox"/> SNOWBOARDER (6)               |
| <input type="checkbox"/> CHARISMA (12)                      | <input type="checkbox"/> JET (20)                          | <input type="checkbox"/> SPORT RIDER (10)              |
| <input type="checkbox"/> CHEVY HIGH PERFORMANCE (12)        | <input type="checkbox"/> LADIES HOME JOURNAL (10)          | <input type="checkbox"/> SUPER CHEVY (12)              |
| <input type="checkbox"/> CIRCLE TRACK (12)                  | <input type="checkbox"/> LATINA (10)                       | <input type="checkbox"/> SURFER (12)                   |
| <input type="checkbox"/> COMPLEX MAGAZINE (6)               | <input type="checkbox"/> LOG HOME LIVING (9)               | <input type="checkbox"/> TAMPA BAY MAGAZINE (6)        |
| <input type="checkbox"/> CONDE NAST TRAVELER (12)           | <input type="checkbox"/> LUCKY (10)                        | <input type="checkbox"/> TEEN VOGUE (10)               |
| <input type="checkbox"/> CRUISING WORLD (12)                | <input type="checkbox"/> MARIE CLAIRE (12)                 | <input type="checkbox"/> TENNIS (6)                    |
| <input type="checkbox"/> CYCLE WORLD (12)                   | <input type="checkbox"/> MEN'S FITNESS (10)                | <input type="checkbox"/> THE ATLANTIC MONTHLY (10)     |
| <input type="checkbox"/> DETAILS - FASHION (10)             | <input type="checkbox"/> MEN'S JOURNAL (12)                | <input type="checkbox"/> TIMBER HOME LIVING (6)        |
| <input type="checkbox"/> DETROIT HOME (6)                   | <input type="checkbox"/> MIDWEST LIVING (6)                | <input type="checkbox"/> TRANSWORLD MOTOCROSS (12)     |
| <input type="checkbox"/> DIGITAL PHOTO (7)                  | <input type="checkbox"/> MINISTRY TODAY (6)                | <input type="checkbox"/> TRANSWORLD SKATEBOARDING (12) |
| <input type="checkbox"/> DIRT RIDER (12)                    | <input type="checkbox"/> MORE (10)                         | <input type="checkbox"/> TRANSWORLD SNOWBOARDING (8)   |
| <input type="checkbox"/> EBONY (11)                         | <input type="checkbox"/> MOTOR TREND (12)                  | <input type="checkbox"/> TRUCKIN (13)                  |
| <input type="checkbox"/> ELLE DECOR (10)                    | <input type="checkbox"/> MOTORCYCLIST (12)                 | <input type="checkbox"/> UPTOWN (6)                    |
| <input type="checkbox"/> ENTREPRENEUR (12)                  | <input type="checkbox"/> MUSCLE & FITNESS (12)             | <input type="checkbox"/> UPTOWN MAGAZINE (6)           |
| <input type="checkbox"/> ESPN MAGAZINE (26)                 | <input type="checkbox"/> MUSCLE MUSTANGS & FAST FORDS (12) | <input type="checkbox"/> W MAGAZINE (10)               |
| <input type="checkbox"/> ESQUIRE (11)                       | <input type="checkbox"/> NYLON GUYS (6)                    | <input type="checkbox"/> WATERFOWL & RETRIEVER (2)     |
| <input type="checkbox"/> EVERY DAY WITH RACHAEL RAY (10)    | <input type="checkbox"/> NYLON MAGAZINE (10)               | <input type="checkbox"/> WEIGHT WATCHERS (6)           |
| <input type="checkbox"/> FAMILY CIRCLE (12)                 | <input type="checkbox"/> OLD HOUSE JOURNAL (6)             | <input type="checkbox"/> WHITETAIL JOURNAL (6)         |
| <input type="checkbox"/> FAMILY FUN (10)                    | <input type="checkbox"/> OUTDOOR LIFE (12)                 | <input type="checkbox"/> WIRED (12)                    |
| <input type="checkbox"/> FAST COMPANY (10)                  | <input type="checkbox"/> OUTDOOR PHOTOGRAPHER (11) NR*     | <input type="checkbox"/> WORKING MOTHER (6)            |
| <input type="checkbox"/> FIELD & STREAM (12)                | <input type="checkbox"/> OUTSIDE (12)                      | <input type="checkbox"/> YOGA JOURNAL (9)              |
| <input type="checkbox"/> FITNESS (10)                       | <input type="checkbox"/> PARENTS (12)                      |                                                        |

Send as many "5 for \$20" orders as you like!

*"Tell your Friends and Families!"*

Send a copy of this page to us. Please make your address as short as possible. **Current customers - Please update your address!**  
Allow 6-8 weeks for delivery. Pay by check, money order or **order online** and use credit card or PayPal.

Name and Inmate # (please print, maximum 24 characters):													
Address:													
City:						State:				Zip:			

\* No Renewal



## Inmate Magazine Service

P.O. Box 2063, Fort Walton Beach, FL 32549 [www.InmateMagazineService.com](http://www.InmateMagazineService.com)

OK to Copy!

# LEARN TO PROTECT YOUR RIGHTS

## YOU HAVE A RIGHT TO

- Adequate medical care
- Protection from assault
- Humane living conditions
- Safety from officer abuse

Learn how to defend your basic human rights with the comprehensive litigation guide, **Protecting Your Health and Safety**, 2nd edition, written specifically for prisoners who are unable to receive help from a lawyer.

Written by Robert E. Toone  
Edited by Dan Manville  
*A Project of the Southern Poverty Law Center\**

**COST** \$16 total  
(\$10 + \$6 shipping/handling)  
FREE shipping/handling for orders  
from Prison Legal News over \$50

## ORDER A COPY

Send a check  
or money order to:  
**Prison Legal News**  
**PO Box 1151**  
**Lake Worth, FL 33460**  
**561-360-2523**

*Be sure to include your name, identification number (if any), and mailing address. We also accept VISA and Mastercard. If using a credit card, please include the type of card (VISA or Mastercard), card number, and expiration date.*

This book does not deal with legal defense against criminal charges or challenges to convictions that are on appeal. Edition last revised in 2009.

\*Please do not send orders to the Southern Poverty Law Center.

## Update on Missouri Incarceration Reimbursement Act Case

**P**RISON LEGAL NEWS PREVIOUSLY reported a decision by the Bankruptcy Appellate Panel for the Eighth Circuit, which held that a Missouri bankruptcy court was correct in concluding that state prison officials did not violate a discharge injunction by collecting money from a prisoner's account for incarceration costs that accrued after the injunction was filed.

In 2009, Missouri prisoner Zachary A. Smith was initially ordered to pay \$87,830.13 to cover the costs of his incarceration through March 2007 under the Missouri Incarceration Reimbursement Act (MIRA), plus future costs that accrued until his release from custody. He filed a Chapter 7 bankruptcy petition in 2010 and received a discharge in March 2011, effectively voiding the MIRA judgment.

In September 2012, however, prison officials seized funds deposited into Smith's prison account for costs that had accrued after he filed for bankruptcy. Smith sought a contempt ruling from the bankruptcy court, alleging the state had violated the discharge injunction. The bankruptcy court agreed that the MIRA judgment was void with respect to costs accrued as of the date of the bankruptcy filing, but held the judgment remained valid as to future incarceration reimbursement costs. The Eighth Circuit affirmed on February 5, 2013. [See: *PLN*,

Feb. 2014, p.11].

Smith then filed a Rule 74.06(b) motion in circuit court, arguing that the state could not seize assets from his prison account for MIRA judgments that were unknown at the time of the MIRA hearing, citing *State ex rel. Koster v. Cowin*, 390 S.W.3d 239 (Mo. Ct. App. 2013) and *State ex rel. Koster v. Wadlow*, 398 S.W.3d 591 (Mo. Ct. App. 2013).

In a March 6, 2014 letter to *PLN*, Smith wrote: "The Chapter 7 [bankruptcy] was necessary to discharge the MIRA debt, but I had to argue that the AG's office could not be reimbursed with assets that were not identified and not known at the time of the MIRA hearing – meaning the AG could not impose future costs for incarceration against me unless it was shown to come from a current stream of income" that existed when the MIRA judgment was entered.

The state conceded, filing a satisfaction of judgment in the circuit court on October 16, 2013, and the MIRA liens against Smith were subsequently removed. Smith, who handled the litigation pro se, noted that Missouri prisoners facing MIRA judgments can successfully challenge them. See: *State of Missouri v. Smith*, Cole County Circuit Court (MO), Case No. 07AC-CC00109-01. ■

## No Discipline for Oregon Prosecutor and Defense Counsel for Illegal Confinement of Mentally Ill Defendant

**A**LTHOUGH THE OREGON STATE BAR initially decided to pursue disciplinary charges against the district attorney for Washington County and a criminal defense attorney who represented a mentally ill defendant, for causing the defendant's illegal confinement, the charges were later dropped.

Donn Thomas Spinosa stabbed his wife to death on May 10, 1997, reportedly because she wouldn't give him money to play video poker. He was found unable to aid and assist in his defense and sent to the Oregon State Hospital (OSH) for mental health treatment.

Under Oregon law, Spinosa could be

held at OSH for no more than three years. When he was still not competent to stand trial in 2000, the criminal charges against him were dismissed and he was civilly committed.

The civil commitment order was renewed annually until 2010, when Washington County District Attorney Bob Hermann claimed that OSH officials told him they were considering discharging Spinosa. An OSH official denied his claim.

In October 2010, Hermann refiled aggravated murder charges against Spinosa, who was again found unable to aid and assist in his defense and returned to OSH.

Hermann and Spinosa's defense counsel,



Robert B. Axford, then filed a joint motion asking Washington County Circuit Court Judge Thomas Kohl to issue a permanent “magistrate mental illness hold” requiring Spinosa’s indefinite confinement at OSH and prohibiting his release without approval by the court. This was unusual because Oregon law does not recognize, or allow for, a “magistrate mental illness hold.”

Nevertheless, Hermann argued that the hold was necessary due to the “woeful inadequacy of Oregon law” with respect to dangerous mentally ill defendants. He admitted that he and other prosecutors dislike the civil commitment process because it removes mentally ill offenders like Spinosa from the criminal justice system.

Neither Hermann nor Axford offered authority for the legality of a magistrate mental illness hold, because no such authority exists. Regardless, Judge Kohl signed the order and dismissed Spinosa’s murder charges. The order cited no legal authority for the hold and simply referred to Hermann’s memorandum.

In December 2011, retired Circuit Court Judge Jim Hargreaves filed complaints with the Oregon State Bar (OSB) against Hermann and Axford, as well as a judicial complaint against Judge Kohl.

Hargreaves noted in the OSB complaints that state law does not allow for a magistrate mental health hold. “Such an order is entirely without legal foundation in Oregon and stripped Mr. Spinosa of all

his rights and protections,” he wrote. Hermann, Axford and Kohl had agreed to an “undeniably invalid order” to sidestep the law, he alleged.

An unrepentant Hermann called the OSB complaint a “cruel irony” given that he, Axford and Judge Kohl had agreed on a solution that they felt best for the public and for Spinosa – even though that solution was unsupported by state law.

Hermann and Axford told the OSB that they believed the order was valid and did not intentionally violate the law. The OSB evidently disagreed, as it voted in September 2012 to pursue disciplinary charges against the two attorneys for unmeritorious legal positions and engaging in conduct prejudicial to the administration of justice.

Meanwhile, Judge Kohl granted OSH’s request to dismiss the questionable magistrate mental illness hold, and Spinosa remained at the hospital under a regular civil commitment order.

Disability Rights Oregon (DRO) launched its own investigation following news reports about Spinosa’s situation, according to Bob Joondeph, the organization’s executive director.

Upon completion of that investigation, DRO issued a report in July 2012 that found Hermann, Axford and Kohl had acted outside the law in creating and imposing the magistrate mental illness hold. The legislature makes the law, the report noted, but in Spinosa’s case the attorneys and judge

“essentially created a new law that allows for a person with mental illness to be detained without the elements of due process.”

In September 2013, the Oregon State Bar rescinded the charges against Hermann and Axford. “Most notably, the OSB’s case rested on a belief that Hermann and Axford crafted an order essentially to bypass Oregon’s civil commitment process in order to permanently institutionalize a criminal defendant without due process of law,” the agency said in a statement. However, the OSB concluded that the attorneys had tried to initiate, rather than circumvent, civil commitment proceedings.

Hermann said the OSB had made the right decision, and noted the case had prompted the state legislature to pass Senate Bill 421 in July 2013, which created new civil commitment procedures for people who are mentally ill and deemed “extremely dangerous.”

In other words, the legislature created the law that did not exist when Hermann, Axford and Judge Kohl ordered Spinosa to be held indefinitely at OSH. 🖱

Source: *The Oregonian*

# See Their Problem



**Contraband Danger**

The Answer:  
Is **CLEAR Electronic Cigarettes**



## LOCK-UPS

**Clearly the Safer Option**

- If They can't Inspect they Must Reject
- End \$100 a Pack Black Market

Ask the Warden for  
**LOCK-UPS**



### Know What's Good On TV With Channel Guide magazine

- Daily schedules for **over 120 channels**
- Weekly **TV best bets**
- **Over 3,000 movie** listings
- **TV Crossword, Sudoku, celebrity interviews** and more
- **1 Year (12 issues)** for just **\$30**

Mail your **\$30 check or money order** payable to **Channel Guide Magazine to:**

Channel Guide Magazine AAEP/LNA  
PO Box 8501, Big Sandy, TX 75755-8501  
Include your name, ID number and address.

Or call 866-323-9385

## Montana: Hospitalized Prisoner Entitled to Continuance in Divorce Case

**T**HE MONTANA SUPREME COURT HELD on March 5, 2013 that refusing to grant a hospitalized prisoner's motion for continuance of a divorce trial was an abuse of discretion.

David and Lori Eslick were married on August 15, 2005. In December 2010, David began serving a sentence in the Montana State Prison (MSP), and Lori filed for divorce.

David was unrepresented and appeared telephonically at all court hearings. A June 12, 2012 pretrial conference and June 25, 2012 trial were scheduled. David failed to appear at the pretrial conference, which was rescheduled for June 19, 2012.

David's failure to appear or communicate with opposing counsel and the court was due to an unexpected medical emergency. On May 5, 2012, he was hospitalized for amputation of septic toes and part of his foot as a result of diabetes. Due to complications he remained hospitalized until June 11, 2012, then was confined in the MSP infirmary for the following week.

David did not receive his mail and could not attend court proceedings during this time, or schedule phone calls with the trial court. On June 18, 2012 he mailed a motion to the court seeking a 60-day continuance.

When David did not appear at the June 19, 2012 pretrial hearing, the court entered a default judgment against him on June 26, 2012, dissolving the marriage, despite having received his motion requesting a continuance.

The Montana Supreme Court reversed,

concluding that "David has demonstrated good cause for granting his motion for a continuance. David's unexpected medical emergency and the conditions of his incarceration were circumstances beyond his control that prevented his appearance at the final pretrial conference."

The Court also concluded that David

had suffered prejudice, as the trial court had "entered its findings of fact, conclusions of law, and default decree of dissolution without the benefit of David's arguments." The case was therefore reversed and remanded for a new pretrial conference and trial. See: *In re Marriage of Eslick*, 2013 MT 53, 304 P.3d 372 (Mont. 2013). ■

## Arkansas Suing Prisoners for Incarceration Costs

**A**RKANSAS OFFICIALS ARE SUING PRISONERS under the State Prison Inmate Care and Custody Reimbursement Act (Act), seeking reimbursement for the costs of their incarceration by obtaining court orders and seizing money from their prison trust accounts.

For example, a state court entered an order requiring prisoner Michael R. MacKool to pay reimbursement costs, and the state sought a similar judgment against prisoner Deral Plunk. Both were subject to orders that confiscated the funds in their accounts for placement in a court account pending the outcome of the litigation.

MacKool is serving a cumulative 60-year sentence for first-degree murder and theft of property. In October 2010, Arkansas filed a petition against him in state court under the Act. Following a show-cause hearing, \$5,016.61 in MacKool's prison account was ordered deposited into the state treasury; he appealed that judgment, which was affirmed. See: *MacKool v. State*, 2012 Ark. 287 (Ark. 2012).

On rehearing, he argued the court had incorrectly held that his lack-of-due-process argument had not been presented to the circuit court. Next, he claimed money he had received from his mother was not part of his "estate" as that term is used in the Act. Finally, he argued his equal protection rights had been violated.

The due process claim was based on the funds in MacKool's prison account being ordered confiscated on October 18, 2010, but the court did not provide him with notice until over two weeks later. The Arkansas Supreme Court found the only time that MacKool pointed to this issue was during opening statements, which the Court held is not an occasion for argument; an opening statement is an outline of the evidence to be introduced and the nature of the issues to be tried. Thus, MacKool had failed to properly present the due process argument before the circuit court and could not raise it on appeal.

As to the definition of "estate," the Supreme Court held the plain language of

Introducing **THE BUZZ REPORT!** Subscribe today, and get all of your sports scores and lines delivered conveniently to your email inbox, every day! Add **info@sportzzbuzz.com** to your Corrlinks email subscription list for info. on how to get The Buzz!

the Act “reflects that any money received by an inmate, including a gift from a family member, is part of his ‘estate’ for purposes of this statute.” Finally, the Court refused to hear the equal protection claim because MacKool had failed to raise it in his original briefs. See: *MacKool v. State*, 2012 Ark. 341 (Ark. 2012).

The state also filed a petition under the Act to seek reimbursement of incarceration costs from prisoner Deral Plunk. It secured an order to confiscate \$7,007.47 from his prison account to hold in a court account until the litigation was concluded. Plunk moved to dismiss the action, and the state moved to transfer the case to another circuit court.

That court denied Plunk’s motion but granted the state’s motion. Plunk appealed. The Arkansas Supreme Court held that because neither part of the order constituted a final order, it was unappealable. As a result, Plunk’s motion to proceed in forma pauperis on appeal was denied. See: *Plunk v. State*, 2012 Ark. 362 (Ark. 2012).

More recently, on October 31, 2013, a U.S. District Court in Arkansas ruled against state prisoner Michael Williams,

who challenged the seizure of funds from his prison account that he had received as a judgment in a § 1983 lawsuit against jailers at the Miller County Detention Center. In March 2013, the district court had awarded Williams \$10,350 in damages and costs in the suit. Pursuant to a state court order under the Act, however, \$8,530.95 was confiscated from the judgment funds after they were deposited in his prison account.

Williams moved the district court to enjoin the state from seizing the judgment awarded in his § 1983 suit, which the court construed as a motion under Fed.R.Civ.P. 69, “invoking the Court’s inherent power to enforce its judgments.” However, the district court held it did not have jurisdiction to grant the motion after the judgment had been satisfied by the payment of funds to Williams.

The court noted that the Eighth Circuit “has previously held a state may not attach to section 1983 judgment proceeds awarded to an inmate for the purpose of recouping incarceration costs,” citing *Hankins v. Finnel*, 964 F.2d 853 (8th Cir. 1992); however, “the facts presented here do not fit within the narrow parameters of that

precedent.” The district court found that the prohibition against the state’s seizure of funds obtained in a § 1983 lawsuit for reimbursement of incarceration costs does not apply when the judgment in the suit was obtained from a non-state party – in this case, from Miller County.

“Therefore, the entity paying Williams’s judgment proceeds and the entity seeking to attach to the judgment proceeds are entirely distinct, thus, eliminating any *Hankins* type concerns over the deterrent effect of a section 1983 award,” the district court concluded. See: *Williams v. Rambo*, U.S.D.C. (W.D. Ark.), Case No. 4:09-cv-4088; 2013 U.S. Dist. LEXIS 156458 (W.D. Ark. 2013). ▀

### Actual Innocence

Explains how the innocent are convicted by faulty eyewitness testimonies, police perjury, expert witnesses, prosecutorial misconduct, etc., and how DNA testing is used to free the innocent.

\$16.00 from PLN's Book Store!

See page 61 for more information.

### ~ THE SENZA COLLECTION ~

SENZA SPECIALIZES IN PROVIDING YOU SEVERAL CHOICES  
ALL NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY – OR – NON NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY  
WE HAVE DIVIDED OUR CATALOGS INTO THESE CATEGORIES:

#### CAUCASIN/AFRICAN-AMERICAN/HISPANIC/ASIAN/MIXED HOTTIES

EACH PAGE OF OUR CATALOGS HAS 99 GLORIOUSLY SEDUCTIVE LADIES POSING JUST FOR YOUR ENJOYMENT.

OVER 250 CATALOGS TO COLLECT AT JUST \$2.50 PER CATALOG

HERE’S A LITTLE FREEBIE FROM SENZA TO YOU!!!

ORDER YOUR FREE SENZA “99 HOTTIES” SAMPLE CATALOG

JUST SEND US TWO U.S. FOREVER OR FIRST CLASS STAMPS AND A SELF ADDRESSED STAMPED ENVELOPE TO:

**SENZA**  
FREE CATALOG OFFER  
**P.O. BOX 5840**  
**BALTIMORE, MD 21282**

**AND FOR THOSE THAT JUST CANNOT WAIT...TAKE ADVANTAGE OF THIS LIMITED TIME OFFER**

#### SENZA’S INTRODUCTORY SPECIAL \*\*\*DIRTY DOZEN\*\*\*

\$19.99 GETS YOU ALL THIS + FREE SHIPPING AND HANDLING

12 EYE POPPING CATALOGS! EACH CATALOG HAS 99 PICS TO CHOOSE FROM ON EACH PAGE

PLUS

12 4X6 PRINTS FROM OUR MIXED HOTTIES SELECTION TO SHOW OFF SENZA’S 4X6’S PRINT QUALITY.

**ALL FOR JUST \$19.99**

**REMEMBER YOU MUST: SPECIFY NUDE OR NON-NUDE ON YOUR ORDER**

**SPECIFY YOUR INSTITUTIONS RESTRICTIONS AS TO THE NUMBER OF PRINTS ALLOWED IN ONE ENVELOPE.**

**SENZA CORPORATE POLICIES – PLEASE REVIEW THEM CAREFULLY**

**ALL SENZA COLLECTION IMAGES ARE SOLD AT A FLAT PRICE OF 0.35 CENTS EACH.**

ANYONE WISHING TO PURCHASE 1000 + PRINTS AT ONE TIME WILL BE GIVEN A FLAT PRICE OF 0.30 CENTS PER IMAGE.

**SENZA HAS A MINIMUM ORDER REQUIREMENT OF: \$15.00 THIS DOESN’T INCLUDE S&H CHARGES.**

**SHIPPING AND HANDLING CHARGES ARE AS FOLLOWS:**

**1 – 5 4x6 PRINTS – \$1.00 PER ENVELOPE / 6 – 15 4x6 PRINTS – \$1.50 PER ENVELOPE / 16 – 25 4x6 PRINTS – \$2.00 PER ENVELOPE**

YOU MUST NOTIFY SENZA ON THE ORDER FORM, THE MAXIMUM NUMBER OF PRINTS YOUR INSTITUTION WILL PERMIT IN EACH ENVELOPE

**SENZA WILL ACCEPT U.S. FIRST CLASS POSTAGE STAMPS AT THE RATE OF \$5.00 FOR EACH BRAND NEW FLAT BOOK OF 20 STAMPS.**

YOU ARE REQUIRED TO KNOW YOUR INSTITUTIONS POLICIES REGARDING WHAT IMAGES ARE ACCEPTABLE INTO YOUR FACILITY INSTITUTION. THERE ARE NO EXCEPTIONS TO THIS POLICY. RETURNED/REJECTED MAIL – YOU WILL HAVE 15 BUSINESS DAYS TO SEND US A SASE WITH A STREET ADDRESS IN WHICH TO MAIL YOUR RETURNED/REJECTED PRINTS.

AFTER 15 DAYS THE PRINTS ARE RETURNED TO OUR INVENTORY.

ALL SALES ARE FINAL/NO REFUNDS OR EXCHANGES

## Texas: False Arrest and Malicious Prosecution Result in \$411,865.18 Recovery

A TEXAS PROBATIONER SUBJECTED TO false arrest and malicious prosecution has been awarded \$169,000 in damages plus attorneys' fees and costs.

Thomas Hannon, 37, unemployed and on probation, had an outstanding arrest warrant for probation revocation. Dallas police knew he was at a local hotel, and on August 1, 2007, police officers arrested several people, including Hannon, at the hotel in connection with a black bag that contained drugs, a .357 revolver and materials related to identity theft. Hannon was jailed on gun, drug and identity theft charges. He was exonerated and released more than 10 months later.

Hannon sued several police officers, but only his claims against officers Jerry Dodd, David Nevitt and Randy Sundquist survived to reach trial. The evidence showed that when the officers arrived at the hotel, Hannon had been waiting for a ride. He was not part of the initial arrest and began walking down the highway.

Police officers were notified that Hannon was walking away, and pursued and arrested him. Prior to the arrest, Hannon had been with a friend. The friend was carrying the black bag with the gun and drugs, but Hannon contended he was never in possession of the bag or knew what it contained.

The police report prepared by Dodd indicated that Nevitt saw Hannon with the bag before the arrest; Nevitt never indicated in the report that he saw Hannon possess the bag, but he later testified to that fact. Nevitt further testified that he never dealt

with the hotel clerk.

It was proven that Nevitt lied. Surveillance video showed Hannon's friend had the bag and Hannon was never in possession of it. The clerk testified that Nevitt had in fact requested a copy of the surveillance video from him. Hannon contended that Dodd and Nevitt falsified the police report to maliciously prosecute him; he also noted that Dodd failed to inform federal officials, who were investigating the identify theft, that he had been exonerated.

With respect to injuries, Hannon conceded he would have been arrested in any event and required to serve a month on the probation revocation, but said he remained jailed for 10 months as a result of the false arrest and malicious prosecution, which caused him severe depression and anxiety.

On February 3, 2012, a federal jury found that Hannon did not possess the bag and Dodd and Nevitt had violated his rights. Hannon was awarded \$93,500 for mental anguish and wrongful confinement

against Nevitt and Dodd jointly and severally, \$500 in punitive damages against Dodd and \$75,000 in punitive damages against Nevitt, for a total of \$169,000.

On March 14, 2013, the district court denied the defendants' motions for a new trial and judgment as a matter of law. The court also awarded attorneys' fees to Hannon in the amount of \$241,042.73, plus \$1,591.81 in attorneys' costs and \$4,414.16 in Hannon's costs. The court further awarded \$2,591.71 in costs against Hannon in favor of defendant Sundquist, who prevailed at trial.

On May 8, 2013, pursuant to a joint motion filed by the parties, the district court vacated the judgment and dismissed the case after a settlement was reached in which the City of Dallas agreed to pay a total of \$411,865.18 in combined damages, attorneys' fees and costs. Hannon was represented by Dallas attorneys Scott Palmer and John E. Wall, Jr. See: *Hannon v. Nevitt*, U.S.D.C. (N.D. Tex.), Case No. 3:09-cv-00066-N. ■

## California Supreme Court: Challenge to Booking Fee Order Forfeited Due to Failure to Object in Trial Court

ON APRIL 22, 2013, THE SUPREME Court of California, resolving a conflict among lower state courts, held that a defendant who fails to contest a jail booking fee order when it is imposed forfeits the right to challenge the order on appeal.

After pleading no contest to being a convicted felon in possession of a firearm, Antoine J. McCullough was sentenced to a state prison term of four years. When imposing the sentence, the trial court also ordered McCullough to pay a jail booking fee of \$270.17.

On appeal, McCullough argued that although he had not objected when the trial court imposed the booking fee, he was entitled to challenge it for the first time on appeal because the evidence was insufficient to support a finding that he was able to pay the fee.

The Court of Appeal affirmed the booking fee order, holding that Mc-

Cullough's failure to object in the trial court meant he had forfeited his right to challenge the imposition of the fee on appeal. The California Supreme Court granted review to resolve a split among the appellate courts on this question.

The Supreme Court initially held, as a matter of statutory construction, that the state law which authorizes the imposition of a booking fee – Government Code § 29550.2, subd. (a) – requires the trial court, before ordering payment, to determine the defendant's ability to pay. The Court then cited the general rule that a right may be forfeited if the defendant fails to timely assert it, and found no reason to deviate from that rule with respect to McCullough's challenge to the booking fee order.

Accordingly, the judgment of the Court of Appeal was affirmed. See: *People v. McCullough*, 56 Cal. 4th 589, 298 P.3d 860 (Cal. 2013). ■

**SMITH'S GUIDE to  
HABEAS CORPUS RELIEF**  
for State Prisoners under 28 U.S.C. §2254  
Example pleadings from the initial  
habeas corpus petition to the final  
petition for a writ of certiorari.  
Let Smith guide you step-by-step  
through the federal courts with  
confidence. 380 pages.

\$24.95 + \$6.95 shipping & handling. In CA  
add \$2.18 sales tax. Sent via USPS media mail  
Money orders, personal or institutional checks  
ONLY. Send \$31.90 (In CA, \$34.08) payable to  
Roberts Company  
Send name, address, prisoner #, and payment to:  
**Roberts Company, 15412 Electronic Lane #101  
Huntington Beach, CA 92649**  
Also available on Amazon.com

SMITH'S G  
Habeas Co  
for trial  
money



# State of Washington Prison Phone Justice Campaign!

*Prison Phone Justice Project needs your help for statewide campaign!*

**W**hile much progress has been made in reducing the costs of long distance prison calls, we are still fighting to reduce the high costs of in-state prison and jail calls at the local level. In January 2014, the Human Rights Defense Center (HRDC), the parent organization of Prison Legal News, reopened its Seattle office to launch the Washington Prison Phone Justice Campaign.

This is our first statewide phone justice campaign, and we're excited to have people involved on both the local and national levels who are dedicated to ending the exorbitant phone rates and kickbacks associated with the prison phone industry. David Ganim, HRDC's national Prison Phone Justice Director, has already been obtaining the phone contracts and rates for all 39 county jails in Washington, as well as data from the Washington Department of Corrections.

We recently hired a local campaign director, Carrie Wilkinson, who will manage our office in Seattle and coordinate the statewide campaign. Washington prisoners and their families pay some of the highest phone rates in the nation, and we need your help to win this battle!

Here's how you can help – first, please visit the Washington campaign website:

**[www.wappj.org](http://www.wappj.org)**

There you can see all the ways you can make a difference. The site allows you to sign up for the campaign and upload videos and share blog entries about how high prison phone rates make it difficult for you to stay in touch with your incarcerated loved ones. You can also upload an audio message, and even call in your story to **1-877-410-4863**, toll-free 24 hours a day, seven days a week! We need to hear how you and your family have been affected by high prison phone rates. If you don't have Internet access, you can mail us a letter describing your experiences and we'll post it. Send letters to HRDC's main office at: **HRDC, Attn: WA Phone Justice Campaign, P.O. Box 1151, Lake Worth, FL 33460**. Washington state prisoners can mail us letters and send a copy of this notice to their family members so they can get involved.

By choosing to participate in the Washington Prison Phone Justice Campaign, you will be playing a key role in ending the unfair phone rates that prisoners' families have to pay. We cannot win this battle without your help, so please visit the campaign website and share your experiences! Donations are also welcome and greatly appreciated, and can be mailed to the above address or made online via the campaign site. Thank you for your support!

# Study: TASER Shocks May Cause Fatal Heart Attacks

by Matt Clarke

A STUDY INVOLVING EIGHT PEOPLE WHO lost consciousness immediately after being shocked by a TASER X26 – the most common electronic control device (ECD) used by police, corrections agencies and the military – concluded that ECD shocks can induce fatal cardiac arrest by causing cardiac “capture” and ventricular tachycardia/ventricular fibrillation (VT/VF). Seven of the eight persons profiled in the study died while the eighth suffered memory impairment after receiving a near-fatal shock, according to an article published in *Circulation*, the journal of the American Heart Association.

The eight subjects of the peer-reviewed study were all male, ranging from 16 to 44 years old. Six were under the age of 25. All were struck in the chest with barbs from a TASER X26, a handgun-shaped weapon that fires the barbs with attached conductive wires using compressed nitrogen. The device delivers an initial 5,000-volt shock, followed by rapid micro-pulsing that is designed to mimic the electrical signals used by the brain to communicate with the muscles. The standard shock cycle lasts five seconds but can be shortened or repeated by the user.

The study found that a TASER shock “can cause cardiac electric capture and provoke cardiac arrest” resulting from an abnormal, rapid heart rate and uncontrolled, fluttering heart contractions. The journal article on the study’s findings was authored by Dr. Douglas Zipes, with the Krannert Institute of Cardiology at Indiana University.

Scottsdale, Arizona-based TASER International, Inc., which manufactures the ECD devices, strongly defended its products. Company spokesman Steve Tuttle noted that with only eight subjects in the study, “broader conclusions shouldn’t be drawn based on such a limited sample.”

“There have been 3 million uses of TASER devices worldwide, with this case series reporting eight of concern,” he added. “This article does not support a cause-effect association and fails to accurately evaluate the risks versus the benefits of the thousands of lives saved by police with TASER devices.”

The company’s website boasts that

TASERs have saved nearly 125,000 lives, and that “Every Day TASER CEWs [Conducted Electrical Weapons] are Used **904** Times, Saving a Life from Potential Death or Serious Injury Every **30** Minutes.” The site also quotes a Wake Forest University study which found that “in 1,201 cases, 99.75% [of] people subjected to a TASER CEW had no significant injuries.”

Research published by *USA Today* in May 2012 indicated that the use of TASERs by police has saved lives because officers are less likely to kill someone using a TASER than by shooting them. The research also found that TASERs reduced the number of injuries suffered by police officers when apprehending suspects.

Tuttle questioned whether Dr. Zipes might have possible bias because he had testified as an expert witness in lawsuits against TASER. “There are key facts that contradict the role of the TASER device in all of these cited cases, and Dr. Zipes has conveniently omitted all facts that contradict his opinion,” Tuttle said.

However, Amnesty International reported in February 2012 that more than 500 post-ECD-shock deaths occurred following TASER deployments between 2001 and 2008. Further, a report from a commission of inquiry into the death of a man at the Vancouver airport in Canada concluded there was evidence “that the electric current from a conducted energy weapon is capable of triggering ventricular capture ... and that the risk of ventricular fibrillation increases as the tips of the probes get closer to the walls of the heart.”

Other studies, including a 2011 report by the ACLU of Arizona, have also identified problems with the use of TASERs by law enforcement agencies. [See: *PLN*, April 2012, p.26]. Prior to Dr. Zipes’ research, though, no peer-reviewed study had concluded that ECD shocks can induce ventricular fibrillation leading to sudden cardiac arrest and death.

TASER published an eight-page warning in March 2013 that stated, “exposure in the chest area near the heart has a low probability of inducing extra heart beats (cardiac capture). In rare circumstances, cardiac capture could lead to cardiac arrest.

When possible, avoid targeting the frontal chest area near the heart to reduce the risk of potential serious injury or death.”

In November 2013, TASER submitted a statement to the U.S. Securities and Exchange Commission (SEC) indicating that the company would pay a total of \$2.3 million in settlements in product liability lawsuits. The statement said the settlements were intended to end legal battles over TASER-related “suspect injury or death.”

TASER also changed the warning labels on its ECD products. The company used to tout TASERs as delivering “non-lethal” shocks, but following several TASER-related deaths the language was changed in 2009 to read “less lethal.” Company training manuals now state that “exposure in the chest area near the heart ... could lead to cardiac arrest.”

The eight subjects in the study authored by Dr. Zipes were all clinically healthy. They were hit with one or both TASER barbs in the anterior chest wall near the heart, and all lost consciousness during or immediately after being shocked. In six cases, the first recorded heart rhythms were VT/VF. One had no heart rhythm, and in the eighth subject an external defibrillator reported a shockable rhythm but did not record it.

Two of the subjects had structural heart disease, two had elevated blood alcohol levels and two had both. The study concluded, however, that those conditions were considered unlikely to be the cause of the sudden loss of consciousness that occurred at the time or immediately after they received TASER shocks, although the conditions may have increased the likelihood of ECD-induced VT/VF.

The study also concluded it was unlikely that other known causes of in-custody death, such as “excited delirium” or restraint asphyxia, were factors in the deaths of seven of the eight subjects due to the proximity of the TASER shock to the loss of consciousness.

Dr. Zipes’ research noted that studies in pigs, sheep and humans established that shocks across the chest from the TASER X26 and a new prototype ECD could cause cardiac capture. The pig studies also repeatedly showed that the TASER X26 could induce VT/VF at normal or higher-than-

normal outputs. Similar studies attempting to induce VT/VF by placing the barbs in the anterior chest and using strong, multiple and/or lengthy shocks could not be conducted on humans due to ethical considerations.

Of course, such considerations do not prevent police officers from using TASERS

on suspects, or prison and jail guards from deploying TASERS against prisoners. ■

Sources: *"Sudden Cardiac Arrest and Death Associated with Application of Shocks from a TASER Electronic Control Device,"* by Douglas P. Zipes, M.D. (May 2012); [www.taser.com](http://www.taser.com); *USA Today*, [www.theverge.com](http://www.theverge.com)

## Texas Court Holds CCA is a "Governmental Body" for Purposes of Public Records Law

ON MARCH 19, 2014, A STATE DISTRICT court in Travis County, Texas held that Corrections Corporation of America (CCA), the nation's largest for-profit prison company, is considered a "governmental body" for purposes of the state's Public Information Act and therefore subject to the Act's "obligations to disclose public information."

The court entered its ruling on a motion for summary judgment filed by Prison Legal News, which had brought suit against CCA in May 2013 after the company refused to produce records related to the now-closed Dawson State Jail in Dallas – including reports, investigations and audits regarding CCA's operation of the facility. [See: *PLN*, June 2013, p.46]. Such records would have been made public had the jail been operated by a government agency.

"This is one of the many failings of private prisons," said PLN managing editor Alex Friedmann. "By contracting with private companies, corrections officials interfere with the public's right to know what is happening in prisons and jails, even though the contracts are funded with taxpayer money. This lack of transparency contributes to abuses and misconduct by for-profit companies like CCA, which prefer secrecy over public accountability."

CCA currently operates nine facilities in Texas, including four that house state prisoners.

"The conditions of Texas prisons have been the focus of intense public scrutiny for nearly 40 years," stated Brian McGiverin, an attorney with the Texas Civil Rights Project. "Today's ruling is a victory for transparency and responsible government. Texans have a right to know what their government is doing, even when a private company is hired to do it."

In its summary judgment motion, PLN argued that CCA meets the definition of a

governmental body under the state's Public Information Act, Section 552.003 of the Texas Government Code, because, among other factors, the company "shares a common purpose and objective to that of the government" and performs services "traditionally performed by governmental bodies."

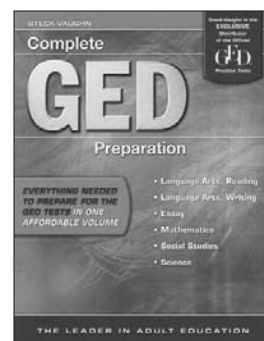
In the latter regard, PLN noted that "Incarceration is inherently a power of government. By using public money to perform a public function, CCA is a governmental body for purposes" of the Public Information Act. CCA's argument to the contrary – that it is not a governmental body and therefore does not have to comply with public records requests – was rejected by the district court.

CCA had also argued that the taxpayer funds it receives from the State of Texas "are not necessarily used specifically for operating Texas facilities," and that such payments "are used generally to support CCA's corporate allocations throughout the United States."

PLN previously prevailed in a similar public records lawsuit against CCA in Tennessee, where the firm is headquartered; another records suit filed by PLN is pending against CCA in Vermont. The company has vigorously opposed lawsuits requiring it to comply with public records laws. [See: *PLN*, July 2013, p.42; June 2013, p.14].

"CCA and other private prison companies should not be able to hide behind closed corporate doors when they contract with government agencies to perform public services using taxpayer money," said PLN editor Paul Wright.

PLN was ably represented by attorneys Cindy Saiter Connolly with Scott, Douglass & McConico, LLP and Brian McGiverin with the Texas Civil Rights Project. See: *Prison Legal News v. CCA*, Travis County District Court (TX), Cause No. D-1-GN-13-001445. ■



### Complete GED Preparation [Paperback]

Publisher: Steck-Vaughn; 2nd edition  
928 pages; \$24.99; Item #: 1099

Over 2,000 GED-style questions thoroughly prepare learners for test day. This single book offers thorough coverage of the revised GED Test with new test information, instruction, practice, and practice tests. Answer key included.

Order from: **Prison Legal News**  
(Add \$6 shipping for orders under \$50)  
**PO Box 1151**  
**Lake Worth, FL 33460**  
**Phone: (561) 360-2523**  
[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

### STRENGTH STACK 52

114 BODYWEIGHT EXERCISE CARDS INSIDE!

**JUST \$21.95!\***  
(shipping included)

**Experience the Game of Fit!**

Send money orders or institutional checks made payable to:  
**Prisoner Assistant**  
**Po Box 704**  
**Lake Harmony PA 18624**

**Features:**  
-Soft cover book with perforated-card stock for playing cards.  
-Many fitness games available.  
-Effective NEW bodyweight training system.  
-Exercise your entire body with no equipment.

# Mass Incarceration: The Whole Pie

## A Prison Policy Initiative briefing

by Peter Wagner and Leah Sakala

**W**AIT, DOES THE UNITED STATES HAVE 1.4 million or more than 2 million people in prison? And do the 688,000 people released every year include those getting out of local jails? Frustrating questions like these abound because our systems of federal, state, local and other types of confinement – and the data collectors that keep track of them – are so fragmented. There is a lot of interesting and valuable research out there, but definitional issues and incompatibilities make it hard to get the big picture for both people new to criminal justice and for experienced policy wonks.

On the other hand, piecing together the available information offers some clarity. This briefing presents the first graphic we're aware of that aggregates the disparate systems of confinement in this country, which hold more than 2.4 million people in 1,719 state prisons, 102 federal prisons, 2,259 juvenile correctional facilities, 3,283 local jails and 79 Indian Country jails as well as in military prisons, immigration detention facilities, civil commitment centers and prisons in U.S. territories.<sup>1</sup>

While the numbers in each slice of this pie chart represent a snapshot cross section of our correctional system, the enormous churn in and out of confinement facilities underscores how naive it is to conceive of prisons as separate from the rest of our society. In addition to the 688,000 people released from prisons each year,<sup>2</sup> almost 12 million people cycle through local jails annually.<sup>3</sup> Jail churn is particularly high because at any given moment most of the 722,000 people in local jails have not been convicted and are incarcerated because they are either too poor to make bail and are being held before trial, or because they've just been arrested and will make bail in the next few hours or days. The remainder of the people in jail – almost 300,000 – are serving time for minor offenses, generally misdemeanors with sentences under a year.

So now that we have a sense of the bigger picture, a natural follow-up question might be something like: how many people are locked up in any kind of facility for a drug offense? While the data don't give us a complete answer, we do know that it's 237,000 people in state prison, 95,000 in

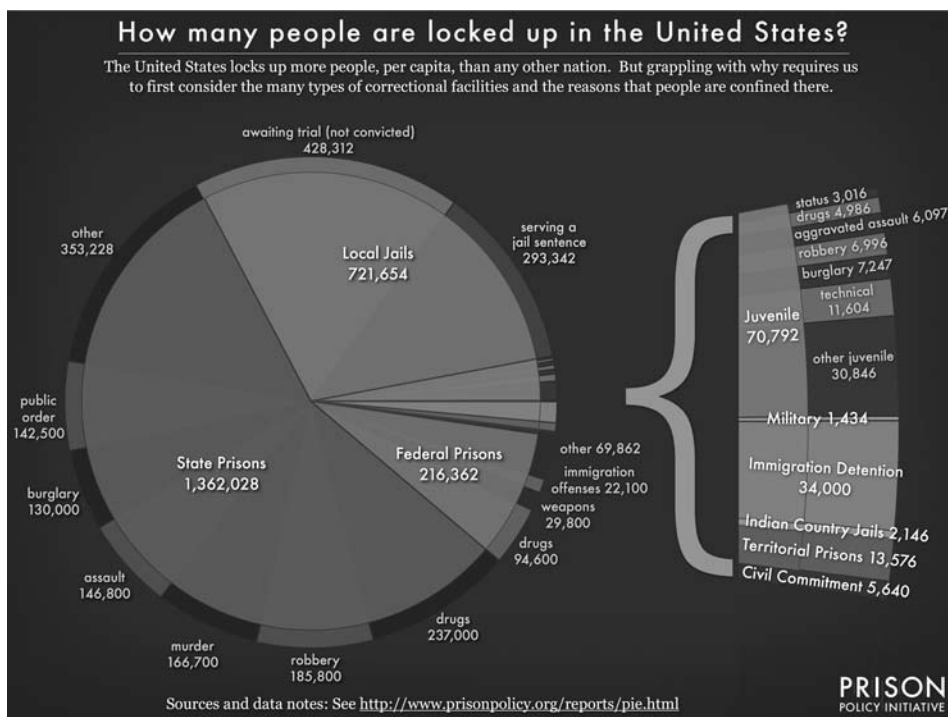
federal prison and 5,000 in juvenile facilities, plus some unknowable portion of the population confined in military prisons, territorial prisons and local jails.

Offense figures for categories such as “drugs” carry an important caveat here, however: all cases are reported only under the most serious offense. For example, a person who is serving prison time for both murder and a drug offense would be reported only in the murder portion of the chart. This methodology exposes some disturbing facts, particularly about our juvenile justice system. For example, there are nearly 15,000 children behind bars whose “most serious offense” wasn't anything that most people would consider a crime. Almost 12,000 children are behind bars for “technical violations” of the requirements of their probation or parole, rather than for a new criminal offense, and more than 3,000 children are behind bars for “status” offenses, which are, as the U.S. Department of Justice explains, “behaviors that are not law violations for adults, such as running away, truancy, and incorrigibility.”<sup>4</sup>

Turning finally to the people who are locked up because of immigration-related issues, more than 22,000 are in federal prison for criminal convictions of violat-

ing federal immigration laws. A separate 34,000 are technically not in the criminal justice system but rather are detained by U.S. Immigration and Customs Enforcement (ICE), undergoing the process of deportation, and are physically confined in immigration detention facilities or in one of hundreds of individual jails that contract with ICE.<sup>5</sup> (Notably, those two categories do not include the people represented in other pie slices who are in some early stage of the deportation process due to non-immigration-related criminal convictions).

Now that we can, for the first time, see the big picture of how many people are locked up in the United States in the various types of facilities, we can see that something needs to change. Looking at the big picture requires us to ask if it really makes sense to imprison 2.4 million people on any given day, giving us the dubious distinction of having the highest incarceration rate in the world. Both policy makers and the public have the responsibility to carefully consider each individual slice of the pie chart in turn, to ask whether legitimate social goals are served by putting each category behind bars and whether any benefit really outweighs the social and fiscal costs. We're





optimistic that this whole-pie approach<sup>6</sup> can give Americans, who seem increasingly ready for a fresh look at the criminal justice system, some of the tools they need to demand meaningful changes to how we do justice.

### Notes on the Data

This briefing draws the most recent data available as of March 13, 2014 from:

- **Jails:** Bureau of Justice Statistics, Jail Inmates at Midyear 2012 - Statistical Tables, page 1 and Table 3, reporting data for June 30, 2012.

- **Immigration detention:** "Congress Mandates Jail Beds for 34,000 Immigrants as Private Prisons Profit," Bloomberg News,

Sept. 24, 2013.

- **Federal:** Bureau of Justice Statistics, Prisoners in 2011, page 1 and Table 11, from data as of December 31, 2011.

- **State Prisons:** Bureau of Justice Statistics, Prisoners in 2011, Table 9, reporting data as of December 31, 2010.

- **Military:** Bureau of Justice Statistics, Correctional Populations in the United States, 2012, Appendix Table 2, reporting data for December 31, 2012.

- **Territorial Prisons,** Prisons in U.S. territories (American Samoa, Guam and the U.S. Virgin Islands) and U.S. commonwealths (Northern Mariana Islands and Puerto Rico): Correctional Populations in the United States, 2012, Appendix Table

2, reporting data for 2012 – includes both territorial prisons and jails.

- **Juveniles:** Office of Juvenile Justice and Delinquency Prevention, Census of Juveniles in Residential Placement, 2010, reporting data for February 24, 2010.

- **Civil Commitment:** Deidre D'Orazio, Ph.D., Sex Offender Civil Commitment Programs Network Annual Survey of Sex Offender Civil Commitment Programs, 2013.

- **Indian Country** (correctional facilities operated by tribal authorities or the Bureau of Indian Affairs): Bureau of Justice Statistics, Correctional Populations in the United States, 2012, Appendix Table 2, reporting data for June 29, 2012.

## HotFlixx

Photo Service

- \$1/ Each -10 Picture Minimum
- High Quality/ Clear 4x6 Pictures
- Free Shipping /Fast Delivery
- Great Customer Service- We **LOVE** our customers!
- **FREE Catalog**- just send a SASE and tell us if you want a male or female catalog
- Custom Orders/ Special requests \$2/ each (example celebrity upskirts)
- Enlargements 5x7, 8x10 available

**The following catalogs are \$3 each**

Women Vols 1, 2, 3, 4, 5, 6, 7  
Action shots, Black Women,  
Asian, Latina, Plumpers Vols 1,2,  
Topless Vols 1,2, Boobs Vols 1,2,  
Camel Toe Vols 1,2, Tattoo Girls,  
Foot Fetish, Transsexual,  
Male Vols 1,2,3,4,5

\*We accept money orders/ inmate trust\*

**HotFlixx**  
**PO Box 137481**  
**Fort Worth, TX 76136**



# PRISONER ASSISTANT

REHABILITATION AND REENTRY PLANNING



**Join Our Exclusive Membership, Open a Bank Account and Gain Access to Our Services!**  
We only provide services to our clients, no exceptions. **MEMBERS ONLY**

Bank Account under your social security number. Deposits, Statements, Money Orders, Bank Checks, Green Dot, Stamp Exchange, Wire Transfers, Direct Deposit & PayPal.





Internet Purchases, Gift Cards, Greeting Cards, Lottery, Sporting News & Current Events, People Search, Personal Shopper. "If It Can Be Done, We Will Try To Do It", see our catalog for more.

We can do any Graphic Design project. Printed Material, Musical Emails, Creative Writing, Photo Reproduction & Forwarding, Book Publishing, Book Cover Design, Press Releases, Portfolio Creation, and Website Building.





Mailboxes, Emails, Faxes, Texts, Scanning, Copies, Typing, Storage, Document Preparation, Internet Research, Prepaid, Contract & Computer Aided Phones.

Place your profile on [prisonerassistant.com](http://prisonerassistant.com) and access our Special Features; Classifieds, Portfolios, Posts & Blogs, Market Place and Sponsor a Prisoner.



PO Box 704-AD1  
Lake Harmony, PA 18624-0704  
[www.prisonerassistant.com](http://www.prisonerassistant.com)  
[info@prisonerassistant.com](mailto:info@prisonerassistant.com)  
(570) 722-5800



For more information - send \$4.50 to "Prisoner Assistant" for an Application Package and 80 page color catalog. If you send an SASE you will only receive a brochure.

**JOIN NOW!**



**The services below are available to all prisoners - not just our clients**

**Free E-Newsletter Update**

We have reviewed our E-Newsletter efforts via Corlinks and the benefits/inmate costs involved. The new E-Newsletter arrival date will fluctuate and the frequency will be up to 5 times a month containing information relevant to Prisoner Assistant and reentry planning. Sign Up Today! [Info@prisonerassistant.com](mailto:Info@prisonerassistant.com)



**Banking and Financial Management Course**  
120 pages, complete course with 8 chapters and exams. Transcript and Certificate available. Send \$25.00 to Prisoner Assistant at the address above with a request for the course. Open to Everyone.



**Personal Reentry Guide and Journal**  
233 pages, complete course with 7 chapters and exams. Transcript and Certificate available. Send \$30.00 to Prisoner Assistant at the address above with a request for the course. Open to Everyone.

Several data definitions and clarifications may be helpful to researchers reusing this data in new ways:

- The state prison offense category of “public order” includes weapons, drunk driving, court offenses, commercialized vice, morals and decency offenses, liquor law violations and other public-order offenses.

- The state prison “other” category includes offenses labeled “other/unspecified” (7,900), manslaughter (21,500), rape (70,200), “other sexual assault” (90,600), “other violent” (43,400), larceny (45,900), motor vehicle theft (15,000), fraud (30,800) and “other property” (27,700).

- The federal prison “other” category includes people who have not been convicted or are serving sentences of under 1 year (19,312), homicide (2,800), robbery (8,100), “other violent” (4,000), burglary (400), fraud (7,700), “other property” (2,500), “other public order offenses” (17,100) and a remaining 7,850 records that could not be put into specific offense types because the “2011 data included individuals committing drug and public-order crimes that could not be separated from valid unspecified records.”

- The juvenile prison “other” category includes criminal homicide (924), sexual assault (4,638), simple assault (5,445), “other person” (1,910), theft (3,759), auto theft (2,469), arson (533), “other property” (3,029), weapons (3,013) and “other public order” (5,126).

- To minimize the risk of anyone in immigration detention being counted twice, we removed the 22,870 people – cited in Table 8 of Jail Inmates at Midyear 2012 – confined in local jails under contract with ICE from the total jail population and from the numbers we calculated for those in local jails that have not been convicted. (Table 3 reports the percentage of the jail population that is convicted (60.6%) and unconvicted (39.4%), with the latter category also including immigration detainees held in local jails).

- At least 17 states and the federal government operate facilities for the purposes of detaining people convicted of sexual crimes after their sentences are complete. These facilities and the confinement there are technically civil, but in reality are quite like prisons. They are often run by state

prison systems, are often located on prison grounds and, most importantly, the people confined there are not allowed to leave.

### Acknowledgements

Thanks especially to Drew Kukorowski for collecting the original data for this project and to [PLN managing editor] Alex Friedmann for both identifying ways to update the data and for locating the civil commitment data. We thank Tracy Velázquez and Josh Begley for their insights on how to use color to tell this story. Thanks to Holly Cooper, Cody Mason and Judy Greene for helping untangle the immigration-related statistics. Thanks also to Arielle Sharma and Sarah Hertel-Fernandez for their copy editing assistance. ■

*This briefing was published by the Prison Policy Initiative ([www.prisonpolicy.org](http://www.prisonpolicy.org)) on March 12, 2014; it is reprinted with permission.*

### ENDNOTES

1 The number of state and federal facilities is from Census of State and Federal Correctional Facilities, 2005; the number of juvenile facilities from Census of Juveniles in Residential Placement, 2010; the number of jails from Census of Jail Facilities, 2006 and the number

of Indian Country jails from Jails in Indian Country, 2012. We aren't currently aware of a good source of data on the number of the other types of facilities.

2 U.S. Department of Justice, Prisoners in 2011, page 1, reporting that 688,384 people were released from state and federal prisons in 2011. [Ed. note – the number of releases dropped to 637,400 in 2012]

3 See page 3 of Bureau of Justice Statistics, Jail Inmates at Midyear 2012 – Statistical Tables for this shocking figure of 11.6 million.

4 See Office of Juvenile Justice and Delinquency Prevention, Census of Juveniles in Residential Placement, 2010, page 3.

5 Of all of the confinement systems discussed in this report, the immigration system is the most fragmented and the hardest to get comprehensive data on. We used “Congress Mandates Jail Beds for 34,000 Immigrants as Private Prisons Profit,” Bloomberg News, Sept. 24, 2013. Other helpful resources include Privately Operated Federal Prisons for Immigrants: Expensive. Unsafe. Unnecessary; Dollars and Detainees: The Growth of For-Profit Detention; and The Math of Immigration Detention.

6 It is important to remember that the correctional system pie is far larger than just prisons and includes another 3,981,090 adults on probation and 851,662 adults on parole. See Bureau of Justice Statistics, Probation and Parole in the United States, 2012, Appendix Tables 2 and 4.

## New York Prisoner Secures Court Order for Visitation with Child

THE NEW YORK COURT OF APPEALS upheld a lower court's ruling that granted an incarcerated father visitation rights with his three-year-old child. The Court held the lower court had properly applied a legal standard that presumes in favor of visitation and considers whether that presumption is rebutted by evidence showing visits would be harmful to the child.

The petitioner, New York state prisoner Shawn G. Granger, acknowledged paternity of a child prior to his imprisonment. He sought an order under the Family Court Act allowing visitation after the mother refused to bring the child to see him in prison.

The family court noted that state law presumes a child's best interest is served by visits with a non-custodial parent, and “the fact that such parent is incarcerated is not an automatic reason for blocking visitation.” The court found that Granger had been involved in the child's life prior to incarceration and had acted to maintain the

relationship after he went to prison. Further, the court determined the child would not be harmed by travel to the prison and thus ordered periodic four-hour visits. The Appellate Division affirmed.

The Court of Appeals rejected the mother's argument that the family court had applied the wrong standard of law. It reaffirmed that “substantial proof” must be presented to overcome the presumption in favor of visitation, including when a parent is incarcerated. Visits should be denied to a non-custodial parent upon a showing they would be harmful to the child, which was not demonstrated in this case.

The Court declined to consider the impact of Granger's subsequent transfer to a more distant facility, as that issue should have been the subject of a modification petition and not presented as an issue of first impression on appeal. The lower court's order was affirmed. See: *Matter of Granger v. Misercola*, 21 N.Y.3d 86, 990 N.E.2d 110 (N.Y. 2013). ■

# States Renewing Their Prison Phone Contracts

*As state DOCs renew or rebid their prison phone contracts, you can help urge them to eliminate commission kickbacks and lower intrastate phone rates.*

*The Campaign for Prison Phone Justice needs your help in*

**\*\*\*\*\* Kentucky, Alaska and Georgia! \*\*\*\*\***

The Departments of Corrections in the above states are in the process of re-bidding or renewing their prison phone contracts. Most DOCs receive a commission (kickback) on revenue generated from calls made by prisoners, which results in excessively high phone rates. Although the FCC voted last year to cap the costs of interstate (long distance) prison calls, which went into effect on February 11, 2014, the order does not apply to intrastate (in-state) calls; an estimated 85% of prison phone calls are in-state. This is an opportunity to ask DOCs to forgo commissions and ensure their new prison phone contracts are based on the lowest cost to those who pay for the calls – mostly prisoners' families.

## **Take Action NOW! Here's What YOU Can Do!**

Ask your family members and friends to write, email, call and fax the DOC and the governor's office (addresses and contacts are listed below), requesting that the DOC: 1) forgo commission payments when re-bidding or renewing its prison phone contract, and 2) base the new contract on the lowest calling cost. Lower prison phone rates should apply not just to long distance calls but also to in-state calls. For a sample letter or to easily send an email, visit the Campaign for Prison Phone Justice's website and click on the "Take Action" tab:

**[www.phonejustice.org](http://www.phonejustice.org)**

### **Prison phone contract information & Contacts:**

**Kentucky:** Receives a 54% kickback; existing contract expires on 5-31-2014. The DOC charges \$4.50 for a 15-minute collect intrastate call and \$1.85 for a collect local call. **Contacts:** Kentucky DOC, Commissioner LaDonna Thompson, 275 East Main Street, Frankfort, KY 40602; ph: 502-564-4726, fax: 502-564-5037, email: [ladonna.thompson@ky.gov](mailto:ladonna.thompson@ky.gov). Governor Steve Beshear, 700 State Capitol, Frankfort, KY 40601; ph: 502-564-2611, fax: 502-564-2517, email: [governor@ky.gov](mailto:governor@ky.gov)

**Alaska:** Receives a 7 to 32.1% kickback; existing contract expires on 6-30-2014. The DOC charges \$2.63 to \$7.61 for a 15-minute collect intrastate call (local calls are free). **Contacts:** Alaska DOC, Commissioner Joseph Schmidt, 550 W. 7<sup>th</sup> Ave., Suite 860, Anchorage, AK 99501; ph: 907-465-4652, fax: 907-465-3390, email: [joseph.schmidt@alaska.gov](mailto:joseph.schmidt@alaska.gov). Governor Sean Parnell, State Capitol, P.O. Box 110001, Juneau, AK 99811; ph: 907-465-3500, fax: 907-465-3532, email: [governor@alaska.gov](mailto:governor@alaska.gov)

**Georgia:** Receives a 60% kickback; existing contract expires on 6-30-2014. The DOC charges \$4.85 for a 15-minute collect intrastate call and \$2.70 for a collect local call. **Contacts:** Georgia DOC Comm. Brian Owens, 300 Patrol Road, Forsyth, GA 31029; ph: 478-992-5261, fax: 478-992-5259, email: [gdccommish@dcor.state.ga.us](mailto:gdccommish@dcor.state.ga.us). Governor Nathan Deal, 203 State Capitol, Atlanta, GA 30334; ph: 404-656-1776, fax: 404-657-7332, email: [khorne@georgia.gov](mailto:khorne@georgia.gov) or [georgia.governor@gov.state.ga.us](mailto:georgia.governor@gov.state.ga.us)

## Placing Rival Gang Members in Same Cell Not Per Se Unconstitutional

THE NINTH CIRCUIT COURT OF APPEALS applied the harmless error test in finding that a district court's late *Rand* summary judgment notice did not deprive a prisoner of substantial rights. Additionally, the appellate court held prison officials were not deliberately indifferent to a substantial risk of violence by placing two rival gang members in the same cell.

This case involved the appeal of a Hawaii federal district court's grant of summary judgment to Corrections Corporation of America and CCA guards at the Saguaro Correctional Center (SCC) in Arizona. The suit was brought by Hawaii state prisoner Keone Labatad, who was housed at SCC and assaulted by another prisoner on July 23, 2009.

Three days earlier, Labatad, a member of the La Familia gang, got into a fight with Howard Giddeons, a member of the USO Family gang. Both told guards that the fight was not gang-related and they had shook hands afterwards. Following procedure, both were placed in administrative segregation.

Labatad was put in a cell with Shane Mara, a USO Family gang member. On the day of the assault, Mara waited until Labatad was in hand restraints in preparation for leaving the cell; he then hit Labatad in the head and back, causing a welt and a bloody nose.

Labatad filed a civil rights action alleging his Eighth Amendment rights were violated by a general policy at SCC that allowed rival gang members to be housed in the same cell, as well as the specific decision to place him in a cell with Mara. He sought damages and injunctive relief, and the defendants moved for summary judgment.

The day after Labatad filed a detailed response to the motion, the district court sent him the summary judgment notice required under *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998) [*PLN*, April 1999, p.19]. The purpose of the *Rand* notice is to provide a pro se prisoner litigant "fair notice" of his "rights and obligations under Rule 56," his "right to file counter-affidavits or other responsive evidentiary materials and be alerted to the fact that failure to do so might result in the entry of summary judgment

against" him, and "the effect of losing on summary judgment." The court granted the defendants' motion and Labatad appealed.

The Ninth Circuit held the district court's delay in sending the *Rand* notice was error, but held this was "one of the unusual cases" where the error was harmless because "the record, viewed objectively, shows that Labatad knew and understood the information in the *Rand* notice before he received it."

The district court found that SCC's policy of permitting members of different gangs to be housed together in the same cell was not itself an Eighth Amendment violation. At oral argument, Labatad clarified he was not asserting a per se constitutional violation; instead, he was alleging the defendants were deliberately indifferent to the

risk of harm resulting from his cell assignment with Mara, a rival gang member.

Viewing the record objectively and subjectively, the Ninth Circuit found the evidence was insufficient to preclude summary judgment on that claim. Mara and Labatad had been in general population for an extended period of time without threats or problems between them, they were not listed as "separatees," and prison officials had been assured the fight between Labatad and Giddeons was resolved and not gang-related. In sum, there were no facts to suggest that Labatad was at substantial risk of harm when he was housed with Mara.

The district court's order granting summary judgment to the defendants was affirmed. See: *Labatad v. CCA*, 714 F.3d 1155 (9th Cir. 2013). ■

## GPS Monitoring System in Los Angeles Plagued by False Alerts, Ignored Alarms

by Christopher Zoukis

LOS ANGELES COUNTY'S GPS MONITORING system, designed to keep track of high-risk probationers, has overwhelmed probation officers with thousands of false alerts each day – so many that some officers simply ignore them. As a result, dozens of probationers have been able to roam unmonitored. In some cases, even when probationers removed their monitoring devices, the removal was not discovered for lengthy periods of time.

GPS monitors are used to track the highest-risk probationers and parolees, including sex offenders. A massive shift of prisoners from state prisons to county jails under California's "realignment" legislation has led some counties to release hundreds of low-level offenders on electronic monitoring as a way to cut costs and reduce jail overcrowding.

The GPS system in Los Angeles County picks up satellite signals and transmits the data over cellular networks to a central computer. The system is designed to send an alert to a probation officer under a variety of circumstances; for example, if a probationer tries to remove the monitor or enter a designated prohibited area, or if the GPS batteries run down. The GPS devices

send alerts for a number of routine reasons, too, such as when the signal is blocked by a building or if the monitor has a loose strap or damaged case.

According to probation officers, there is no easy way to distinguish the cause of the alert. Thus, a prolonged lost monitoring signal might mean the probationer has absconded or simply that the signal is being blocked due to a building's structure.

County officials say they have been "overwhelmed" with thousands of alarms each day. Most are relatively meaningless, for low battery warnings or blocked signals, and are ignored or deleted by probation officers. Others are more serious; 80 probationers removed their GPS devices in 2013, and in one case an offender went unmonitored for 45 days.

"If a person's not being properly monitored or supervised, then what's going to stop them from taking it off and leaving?" asked Dwight Thompson, a representative for the union that represents Los Angeles County probation officers. "If they take it off, what was the point of putting it on?"

A field test in 2011 found that GPS devices used to monitor California sex of-



fenders transmitted no signal 55 percent of the time, and *PLN* previously reported that thousands of sex offenders in the state had removed their GPS monitors or committed monitoring violations, as there were few repercussions for doing so. [See: *PLN*, April 2013, p.18].

A November 13, 2013 corrective action notice sent by the Los Angeles County Probation Department to Sentinel Offender Services, the company that provides the county's GPS system, indicated that one in four GPS devices were faulty—they generated too many false alarms or had defective batteries. Sentinel blamed poorly-trained probation officers and probationers who didn't follow instructions for properly charging their GPS monitors. [See: *PLN*, Jan. 2014, p.18]. The company has increased training and replaced the monitors with more recent models.

Private companies that provide GPS monitoring services may be more interested in generating profit than ensuring public safety—one of several concerns related to the increased use of electronic monitoring. [See: *PLN*, March 2012, p.20].

While faulty equipment doesn't help matters, Los Angeles County also has the

GPS system set up to send an email alert to a probation officer when a probationer passes through, or travels close to, a prohibited area—such as when sex offenders are near schools or parks. There are some 4,900 prohibited areas in the county, about one every square mile. This makes it almost impossible for a probationer to go anywhere without triggering alerts, and thousands of those alarms are generated each month.

"Just riding the Red Line [public transportation] would set off 10 alerts, passing schools on the way," noted John Tuckek, a vice-president for the Association of Probation Supervisors who also works as a probation officer. "If we keep getting false positives, we're not going to know the real ones that mean danger."

"When these alerts are in the tens of thousands, it seems like an unwinnable situation," said

Matthew DeMichele, a former researcher for the American Probation and Parole Association, and coauthor of the Justice Department's guide on electronic monitoring. GPS monitoring systems simply don't provide the level of accountability and security that they claim, he added: "In some ways, GPS vendors are selling law enforcement agencies, politicians, the public a false bag of goods." ■

Sources: *Associated Press*, [www.latimes.com](http://www.latimes.com), [www.utsandiego.com](http://www.utsandiego.com), <http://arstechnica.com>



## FULTON & WELCH TEXAS PAROLE ATTORNEYS

- o AFFORDABLE
- o PERSONALIZED PACKET
- o 2 HEARINGS
- o MEET WITH YOU & FAMILY

"LET US GET YOU HOME SOONER"

10701 Corporate Dr., Ste. 390,  
Stafford, Texas 77477

msp | LAW



Michael Soukup  
Licensed in Wisconsin and Illinois

Matthew Pinix  
Licensed in Wisconsin

## Appealing a Conviction? Hire an Appellate Attorney.

You wouldn't hire a **heart surgeon** to perform **brain surgery**. Don't hire a **trial attorney** to handle **your appeal**. Hire someone who focuses on **criminal appeals**.

Hire the **Law Office of Matthew S. Pinix**, attorneys with more than 10-years' combined experience handling **criminal appeals** in **Wisconsin** and **Illinois**.

**Law Office of Matthew S. Pinix, LLC**  
1200 East Capitol Drive, Suite 220  
Milwaukee, Wisconsin 53211  
(414) 963-6164  
[www.pinixlawoffice.com](http://www.pinixlawoffice.com)

- » Rated by Super Lawyers\*
- » Rated by avvo.com
- » Better Business Bureau accredited

## NEW FRIENDS, HIGHER EDUCATION, AND EMPLOYMENT & HOUSING UPON RELEASE THROUGH WRITEAPRISONER.COM PROFILES

**Contact WriteAPrisoner.com &  
Start Looking Forward  
To Mail Call!**

AS SEEN ON

CNN, 20/20, Fox News,  
Dr. Phil, O Magazine,  
E! True Hollywood,  
and hundreds more!

**WriteAPrisoner.com...**

Simply the largest, highest ranked, &  
most visited website of its kind!

- Pen-pal Profiles are affordably priced at \$40 for the first year, \$30 for renewing year
- Features a comprehensive search that allows viewers to find your profile by age, race, location, keywords, & more - 32 search options in all
- Your new friends can email their first message to you along with a photo
- Advertises non-stop on every major search engine with thousands of websites linking back to us
- Offers free Reintegration Profiles for inmates seeking employment and housing upon release and education during incarceration
- Translated into 51 languages & geared for international search engines
- Viewers can "subscribe" to your profile to be notified when your profile is updated, blog is added, artwork is posted, poetry is added, your release is near & much more
- Pen-pals have the option of helping you with a broad range of topics using WriteAPrisoner.com's free Self-Help Series



**Get Started Today!**

Friends & family can submit your  
entire 250 word profile, photo, and  
payment for you online by visiting

[www.writeaprisoner.com/post](http://www.writeaprisoner.com/post)

Or for a **FREE Brochure**, Send a  
S.A.S.E. to:

WriteAPrisoner.com  
PO Box 10- PLN  
Edgewater, FL 32132 USA



Proud member of the Better Business Bureau of Central Florida & the Southeast Volusia Chamber of Commerce.  
\*Our website traffic can be independently verified at [www.quantcast.com/writeaprisoner.com](http://www.quantcast.com/writeaprisoner.com)



# No Death Penalty for Maine Prisoner

by Lance Tapley

**I**N 2008, WITHIN A SUPPOSEDLY HIGH-security prison in the giant federal correctional complex in Florence, Colorado, Gary Watland, a “boarder” from Maine, murdered another prisoner, white supremacist Mark Baker.

After five and a half years – and after, probably, millions in taxpayer-paid legal costs, including for his defense team – Watland, the only Maine prisoner facing a possible death penalty, saw federal prosecutors in Denver on February 5, 2014 accept his offer to spend life behind bars without the possibility of parole.

However, Watland, 51, already had accumulated enough time to spend life in prison. He had been placed in the federal system after being sentenced to 35 years for a 2006 escape attempt at the Maine State Prison, in Warren, where he was serving 25 years for killing a drinking buddy in 2004.

At Warren, Watland had plotted with his wife to have her smuggle a gun behind her belt buckle into the prison visitors’ room, where he allegedly planned to kill guards and anyone else in his way during the breakout. After a prisoner tipped off authorities, Susan Watland was apprehended with the loaded gun in the parking lot.

In Colorado, Watland snuck up on Baker while he was playing poker and stabbed him in the neck with a homemade knife. The plea agreement states: “One blow was to the carotid artery and a second blow severed the brain stem. Mr. Baker fell to the floor dead.” Watland maintained he was in a “kill or be killed” situation. Baker’s prison gang, the Nazi Low Riders, was allegedly harassing gays. Defending his life, Watland came out of the closet.

The feds had wanted to use the arguments that Watland was still dangerous and had a low chance of rehabilitation to obtain a death sentence from a jury, but a judge ruled them out. Shortly after the ruling, prosecutors accepted the plea bargain.

Watland’s case recently stimulated the Maine Prisoner Advocacy Coalition to urge the state Department of Corrections to ban sending Maine prisoners to jurisdictions with the death penalty. Maine doesn’t have capital punishment; the federal government does.

“He’s a classic example of why the

death penalty shouldn’t be used,” commented a prisoner who knew him at Warren. “I believe that Gary Watland is mentally ill.” In 2007 his mother told *The Portland Phoenix* he suffered from bipolar disorder. He denies any mental illness.

Originally from California, Watland re-established his relationship with his parents and teenage daughter during his years awaiting trial in the solitary-confinement ADX prison, which also is in the federal complex in Florence.

“He’s grown as a person over the time I’ve known him,” defense attorney Patrick Burke told the *Phoenix*. “I think he’ll continue to make

a contribution to his family and friends.”

Any future contribution Watland makes will likely be from the austere isolation of the most dreaded supermax in America. Although the U.S. Bureau of Prisons will decide where Watland will be kept, expectations are he will continue to be held at ADX. If he were allowed into a prison’s general population, he would risk being killed in gang revenge. ■

*This article was originally published by The Portland Phoenix (<http://portland.theportlandphoenix.com>) on February 12, 2014; it is reprinted with permission of the author.*

## Qualified Immunity Denied to Michigan Guard for Improper Strip Search of Amputee Prisoner

**T**HE SIXTH CIRCUIT COURT OF APPEALS affirmed the denial of qualified immunity to a Michigan prison guard who allegedly strip searched a prisoner without a legitimate penological reason for doing so. The appellate court also vacated the denial of qualified immunity to a warden who sanctioned the prisoner’s placement in isolation, remanding for consideration of the warden’s qualified immunity defense.

When Martinique Stoudemire entered Michigan’s prison system at the age of 23 in July 2002, she had a lengthy documented history of health problems. Absent proper care, she was at significant risk of experiencing kidney and liver damage, heart attacks, amputations and chronic pain. After arriving at the Huron Valley Women’s Correctional Facility (Huron), her health quickly deteriorated.

By the time she was paroled in 2007, Stoudemire had undergone three amputations, eventually losing both legs below the knee. She attributed her health complications to the failure of prison staff, nurses and associated doctors to provide adequate medical care. The appeal in her lawsuit focused on her final amputation in December 2007, when she contracted a MRSA infection and was quarantined in Huron’s segregation unit. [See: *PLN*, May 2007, p.1].

Michigan Department of Corrections

(MDOC) policy provides for prisoners with MRSA to be quarantined, and the warden at Huron, Susan Davis, designated the facility’s segregation unit as a quarantine location. Pursuant to that policy, Stoudemire spent two weeks in segregation.

While there she received “extremely poor” medical care: The cell was not equipped for disabled prisoners, and she was not provided with assistive devices to safely move between her bed, wheelchair, toilet and shower. Medical staff treated her with contempt, accused her of malingering and responded with hostility when she sought assistance. She was once forced to urinate in a bowl, defecated on herself once, received only one shower in the two weeks she spent in segregation and had to dress her own wounds.

Warden Davis argued that she was entitled to qualified immunity on Stoudemire’s claim that the segregation conditions amounted to deliberate indifference to her serious medical needs. The Sixth Circuit found the district court did not make factual findings pertaining to Davis or her mental state or knowledge of the facts alleged by Stoudemire, and remanded that issue to the lower court to make such findings and rule on Davis’ qualified immunity defense.

The Court of Appeals then addressed a claim against prison guard Ariel N. Dugan, who strip searched Stoudemire on

February 10, 2007. An MDOC reprimand noted that “other persons could have observed” Stoudemire during the strip search because Dunagan failed to block a window in the cell door, and Dunagan admitted that such “visual contact” was possible.

Stoudemire alleged the search was “undertaken to harass or humiliate” her. The appellate court wrote that prisoners have a diminished right to be secure in their persons against unreasonable searches, but “a strip search is a particularly extreme invasion of that right.” The Sixth Circuit said such searches require exigent circumstances.

Three facts, the Court of Appeals found, indicated that the search was invasive. First, the location allowed people in the hall outside Stoudemire’s cell to view the search. Next, Dunagan refused to tell Stoudemire the reasons for the strip search. Dunagan also smirked during the search, which may suggest “personal animus and implicate the dignitary interest ‘inherent in the privacy component of the Fourth Amendment’s proscription against unreasonable searches.’”

The Court emphasized it was not reviewing MDOC policy, but rather considering the acts of a guard who violated that policy and was sued in her individual capacity. It found the right at issue was clearly established, precluding qualified immunity. The district court’s order was vacated in part, affirmed in part, and remanded for a determination of Warden Davis’ qualified immunity defense and of Davis and Dunagan’s immunity defense to Stoudemire’s state law claims. See: *Stoudemire v. Michigan Dept. of Corrections*, 705 F.3d 560 (6th Cir. 2013).

Following remand, on September 25, 2013 the district court granted Stoudemire’s motion to reopen the record to

obtain “new evidence in opposition to the MDOC Defendants’ motion to dismiss and

for summary judgment.” The case remains pending. ■

## ***The Redbook – A Manual on Legal Style, by Bryan Garner (Thomson West, 2<sup>nd</sup> Ed., 2006). 510 pages (spiral bound), \$15.00.***

*Book review by John E. Dannenberg*

**T**HE REDBOOK IS A COMPREHENSIVE reference manual that provides guidance with every facet of preparing legal documents. Reviewed by judges and attorneys, the *Redbook* authoritatively instructs litigants in the mechanics of writing (e.g., punctuation, spelling, citations, footnotes); grammar (all parts of speech, “legalese,” troublesome words); and preparing specific documents such as business letters, case briefs, affidavits, pleadings and motions. The detailed table of contents – 24 pages, not included in the 510 page count – is thoroughly indexed to help locate answers to your questions without time-consuming searches.

The *Redbook* is much more than a reference tool, though. Its bold-faced head notes draw your eye quickly to important subjects. Short tutorial paragraphs follow, educating you about each sub-category within a given topic. This tutorial design provides a superb self-instruction course on English language writing, independent of its focus on legal writing. This text is recommended as the single reference book (beyond a dictionary or thesaurus) necessary for any serious incarcerated writer.

Have you ever stopped to ponder whether you’re inaptly (or ineptly) using an incorrect word? Is it “insidious” or “invidious”? Did you mean “insoluble” or “insolvable”? The *Redbook* expends an impressive 100 pages reviewing troublesome words that we all stumble over

– offering refreshing distinctions among choices with concise explanations of their differences. If you are not sure where to begin to find a word that’s troubling you, a separate index includes 3,600 such words with page number references.

For jailhouse lawyers, the 55-page chapter on appellate briefs will prove useful in creating an effective presentation style beyond the legal points of your argument. Separate chapters guide you through pleadings and motions; additional chapters cover business letters and contracts. Each of the eleven chapters in Part 3 of the manual, “Preparing Legal Documents,” contains printed examples that depict format and style as well as content.

The *Redbook* is an invaluable (i.e., “priceless” versus merely “valuable”) reference and educational tool for people who want to prepare legal documents and concurrently improve their English language writing skills.

The 3<sup>rd</sup> edition of the *Redbook* was published in August 2013 and is priced around \$45.00. Both editions are available from online booksellers such as Amazon, Alibris and Barnes & Noble. Note that the spiral binding of this book (2<sup>nd</sup> and 3<sup>rd</sup> editions) is made of metal wire, which may not be allowed in some prisons and jails. If removed, the wire can be easily replaced with a shoelace. ■

## **Earn an Adams State University Degree via Correspondence Courses**



- Correspondence Courses via mail • No internet access required
- Degree options available — Associate of Arts or Science, Bachelors degrees in English, Business Administration, Government, History, Interdisciplinary Studies, Sociology, Paralegal Certificate Program, Masters Degree in Business Administration
- Affordable tuition — \$165/semester hour for undergraduate correspondence courses, \$350/semester hour for Masters level correspondence courses  
Payment options include cashiers check, credit card, money order or verified personal check
- Accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools
- 16+ years of experience serving incarcerated students
- Veteran friendly
- FREE unofficial evaluation of previously earned credits



Call or write to receive additional information — 800-548-6679  
Adams State University  
Office of Extended Studies, Suite 3000  
208 Edgemont Blvd. Alamosa, CO 81101  
[www.adams.edu](http://www.adams.edu)

# Court Awards \$802,176 in Fees, Costs in PLN Censorship Suit Against Oregon County

**I**N MARCH 2014, A U.S. DISTRICT COURT ordered Columbia County, Oregon to pay \$763,803.45 in attorney's fees and \$38,373.01 in costs in a lawsuit raising claims of illegal censorship at the Columbia County Jail.

Prison Legal News had filed suit against Columbia County and Sheriff Jeff Dickerson in January 2012 after jail employees rejected PLN's monthly publication and letters mailed to prisoners at the facility. Further, the jail refused to provide notice or an opportunity to appeal the censorship of PLN's correspondence. [See: *PLN*, March 2013, p.50].

The Columbia County Jail rejected PLN's publication and letters pursuant to a policy that only allowed prisoners to send and receive mail in the form of postcards. Further, the jail did not allow magazines. In April 2013, following a bench trial, the district court entered judgment for PLN and prohibited enforcement of the policy – the first time that a jail's postcard-only policy has been struck down as unconstitutional following a trial on the merits. [See: *PLN*, June 2013, p.42].

During the litigation, the county admitted “that inmates have a First Amendment right to receive magazines and inmates and their correspondents have a Fourteenth Amendment right to procedural due process.” However, the jail defended its postcard-only policy and claimed there was no official policy banning magazines at the facility.

Following the trial, the district court found that the defendants' purported reasons for adopting the postcard-only policy – preventing the introduction of contraband and saving time during mail inspection – were not supported by the evidence. Columbia County subsequently agreed to pay \$15,000 to resolve PLN's claim for monetary damages.

In its March 24, 2014 order awarding \$802,176.46 in attorney's fees and costs to PLN, the district court rejected the county's arguments and objections to the award.

Jesse Wing, lead counsel for PLN, praised the court for recognizing that the case had advanced the public interest and the rights of many other people. “In his ruling today, Judge Michael H. Simon re-

marked that, ‘This action brought specific injunctive relief not only to PLN but also to all inmates at the Jail and their family and friends and others who wish to correspond with them...,’” Wing noted.

“The court's award of over \$802,000 in attorney's fees and expenses in this case represents the cost of failing to comply with the Constitution of the United States,” said PLN editor Paul Wright. “When county officials willingly violate the Constitution and refuse to remedy those violations, instead choosing to engage in protracted litigation, ultimately there is a greater cost to the taxpayers.”

Columbia County has appealed the district court's judgment and injunction prohibiting enforcement of the jail's postcard-only policy, and the appeal remains pending before the Ninth Circuit.

PLN was ably represented by Jesse Wing and Katie Chamberlain with the Seattle law firm of MacDonald Hoague & Bayless; by the late Marc D. Blackman with the Portland law firm of Ransom Blackman, LLP, who passed away on January 1, 2014; and by Human Rights Defense Center general counsel Lance Weber. See: *Prison Legal News v. Columbia County*, U.S.D.C. (D. Ore.), Case No. 3:12-cv-00071-SI. ■

## Oregon Appellate Court Declines to Correct Unpreserved Sentencing Error Related to Restitution

by Mark Wilson

**I**N MAY 2013, THE OREGON COURT OF Appeals agreed that a trial court had committed plain error when it recommended that a defendant pay restitution in an amount to be determined by the Board of Parole and Post-Prison Supervision (Board). The appellate court refused to correct the error, however, because the defendant did not object before the trial court.

Ramon E. Coronado was convicted of three assault charges. At a January 25, 2010 sentencing hearing on two of the convictions, the state requested restitution of \$5,931.79 to the victim and \$38,676.90 to the victim's insurance company. Coronado's attorney said “No objection.” During sentencing on the remaining conviction the following month, the court stated, “I'm going to recommend ... that [defendant] make restitution to the victim in this case in an amount to be determined by the [Board].”

Despite having failed to object to the second restitution order, Coronado argued that the Court of Appeals should exercise its discretion to review the order as plain error under Oregon Rule of Appellate Procedure 5.45(1).

The appellate court recognized that Coronado “correctly points out – and

the state concedes – that no statute authorizes the court to recommend that [the Board] determine the amount of restitution.”

The Court of Appeals declined to correct the error, however, finding that Coronado had failed to object before the trial court, which would have made this “an easy error for the court to fix.” That is, if he “had brought it to the court's attention, the court could have imposed the restitution instead of recommending [the Board] do so. Now, defendant asks this court not to remand to correct the error, but to strike the portion of the judgment relating to restitution.” The appellate court refused to do so, as “that could result in a windfall” for Coronado by vacating any restitution as to his third assault charge. See: *State v. Coronado*, 256 Ore. App. 780, 302 P.3d 477 (Or. Ct. App. 2013).

However, the Court of Appeals' refusal to correct the error may still result in a “windfall” for Coronado, given that the Board only has the power bestowed upon it by the legislature. As that authority does not include the power to impose restitution in criminal cases, any order from the Board purporting to do so presumably would be *ultra vires* and thus invalid. ■



## New York Prison Officials Can Force-Feed Hunger Striking Prisoner

**T**HE NEW YORK COURT OF APPEALS, the state's highest court, held that a hunger striking prisoner's rights were not violated by a judicial order allowing the state to feed him by nasogastric tube to preserve his life.

The Court's decision labeled New York state prisoner Leroy Dorsey a "serial hunger striker." Indeed, Dorsey went on a hunger strike three times in 2010, in an effort to obtain a transfer to another facility and bring attention to his claims of abuse and mistreatment.

Dorsey began one of the hunger strikes in October 2010; a month later he had lost 11.6% of his body weight. The New York Department of Corrections and Community Supervision (DOCCS) sought an order to insert a nasogastric tube and take other steps to hydrate him.

At a hearing on the petition, the DOCCS submitted testimony indicating that Dorsey was at imminent risk of starving to death or experiencing "a fatal

cardiac arrhythmia due to electrolyte and fluid imbalance." Dorsey opposed the petition, arguing he was not suicidal and the DOCCS had no authority to interfere with his hunger strike protest.

The Supreme Court granted the DOCCS' petition. Following that decision, Dorsey voluntarily consumed a nutritional supplement and ate solid food. The Appellate Division deemed Dorsey's appeal moot but still ruled on the merits with respect to one issue, holding that when "an inmate's refusal to eat has placed that inmate at risk of serious injury and death ... the State's interest in protecting the health and welfare of persons in its custody outweighs an individual inmate's right to make personal choices about what nourishment to accept."

The Court of Appeals applied the four-part test set forth in *Turner v. Safley*, 482 U.S. 78 (1987). It agreed the state has a significant interest in preserving life and preventing suicidal acts, and had

been found liable in the past for failing to do so. The Court also noted a hunger strike can have a "significant destabilizing impact" on a prison. Further, other means were available for Dorsey to protest his treatment, such as grievances or litigation, and the Court distinguished previous cases in which it held that a competent adult may refuse medical treatment.

"In some circumstances we do not doubt that the right to refuse medical treatment is a prerogative that is compatible with incarceration," the Court of Appeals wrote. "But, even if we assume that some permutation of that right was implicated here, its invocation as part of a strategy to strong-arm DOCCS into granting a privilege to which Dorsey was not otherwise entitled is obviously not."

Accordingly, the lower courts' orders were affirmed. See: *Matter of Bezio v. Dorsey*, 21 N.Y.3d 93, 989 N.E.2d 942 (N.Y. 2013). ■



### *Gold Star Fragrances*

4 West 37th St

New York, New York 10018

Tel. 212.279.4474; Tel. 212.279.4470

Fax. 212.279.4471

email: [gstarfragrances@gmail.com](mailto:gstarfragrances@gmail.com)

website: [goldstarfragrances.com](http://goldstarfragrances.com)

We are the original distributor and importer of the finest perfume oils.

We carry over 1000 of the original and best perfume oils, soaps, incenses, body lotions, shower gels, body massage, bottles and more.

All of our oils are shipped in plastic bottles.

Catering to correctional facilities since 1976.

# Ninth Circuit: Delay in Providing Dental Care May Constitute Deliberate Indifference

IN AN UNPUBLISHED RULING, A NINTH Circuit Court of Appeals panel reversed in part a district court's grant of summary judgment to prison officials who, a prisoner alleged, were deliberately indifferent to his serious medical needs.

In 2008, Nevada prisoner Martinez Aytch filed numerous requests for dental treatment for a "rotten" tooth that was causing him "awful" and "unbearable" pain. Nearly six weeks after filing an informal grievance alerting prison officials to his submission of five medical "kites," Aytch received pain medication and antibiotics but still had not seen a dentist. His informal grievance was denied.

Aytch then filed a § 1983 complaint alleging that prison officials had been deliberately indifferent to his dental needs; he also alleged they were deliberately indifferent to his vision problems. The district court granted summary judgment in favor of the prison officials, and Aytch appealed.

Noting that Aytch's vision problems had been addressed when he received eyeglasses, the Ninth Circuit affirmed the grant of summary judgment with respect to that issue.

Relying on precedent, however, such as *Hunt v. Dental Dep't*, 865 F.2d 198 (9th Cir. 1989), the appellate court held that Aytch had raised a triable issue as to whether or not the delay in providing dental care – when considered in light of the pain he had to endure as a result of that delay – constituted deliberate indifference to his serious medical needs.

The Court of Appeals noted that budgetary constraints do not absolve prison officials from liability for such indifference, and remanded the case to the district court for further proceedings. See: *Aytch v. Sablica*, 498 Fed.Appx. 703 (9th Cir. 2012) (unpublished).

Following remand, and after Aytch filed numerous motions related to discovery issues and his ability to access the prison law library and obtain legal copies, the case went to trial in November 2013. The jury found in favor of the defendants and Aytch filed a notice of appeal. In January 2014 the district court denied his motion for transcripts at the government's expense, as it would not certify that the appeal was not frivolous

pursuant to 28 U.S.C. § 753(f). Aytch litigated the case, including the trial, pro se. See: *Aytch v. Sablica*, U.S.D.C. (D. Nev.), Case No. 2:08-cv-01773-VCF-VCF.

On March 6, 2014, in another case involving a prisoner alleging inadequate dental care, the Ninth Circuit held in an en banc decision that prison officials sued for

money damages may raise a defense of lack of available resources to justify the failure to provide adequate medical care. This is contrary to the appellate ruling in *Aytch* and other established precedent, and *PLN* will report the en banc decision in greater detail in a future issue. See: *Peralta v. Dillard*, 2014 U.S. App. LEXIS 4226 (9th Cir. 2014). ■

## Burden-Shifting Jury Instruction Requires New Trial in Prisoner's Lawsuit

THE SEVENTH CIRCUIT COURT OF Appeals has ordered a new trial in a civil rights action that alleges a prisoner was subjected to improper strip searches to humiliate him, then was subjected to an "especially protracted, gratuitous and humiliating strip search" in retaliation for having filed grievances complaining about the earlier searches.

The Court of Appeals had previously reversed an Illinois district court's grant of judgment as a matter of law to the defendants. See: *Mays v. Springborn*, 575 F.3d 643 (7th Cir. 2009). Following remand, the case went to trial and the jury returned a verdict in favor of the defendants. The plaintiff, Tiberius Mays, formerly incarcerated at the Illinois state prison at Stateville, filed another appeal arguing that he was prejudiced by the instructions and special interrogatories submitted to the jury.

Mays' attorney had failed to object to the instructions and interrogatories. As such, the appellate court said it could reverse only if there was "plain error" – meaning error that was both indisputable and likely to have influenced the outcome of the case.

The appellate court found misleading an interrogatory related to an Eighth Amendment claim that asked the jury to state whether each defendant did or did not "have a valid penological reason for the group search conducted [in a specified month or on a specified date]." As the Seventh Circuit held in the previous reversal in this case, even if there was a valid penological reason for the strip searches, "the manner in which the searches were conducted must itself pass constitutional muster."

The evidence showed the group searches had gratuitously exposed the nudity

of each prisoner being searched, and the guards conducted the searches while wearing dirty gloves in a freezing basement and uttering demeaning comments about the prisoners' genitals.

In instructing the jury on Mays' First Amendment claim, the district court placed the burden of proof regarding causation on the wrong party by requiring Mays to negate the possibility that the retaliatory strip searches would have occurred even if there had been no retaliatory motive.

The Court of Appeals held the jury should have been instructed that Mays had the burden of proving retaliation was the motivating factor for the strip search, but even if he presented such proof, the defendants could still prevail if they persuaded the jury that it was more likely than not that the strip search would have occurred even had there been no retaliatory motive.

The failure to give such an instruction was found to be plain error, and that error was compounded by the special interrogatories submitted to the jury by the district court, which asked four times whether retaliation was "the sole motivating factor" for the strip search. Therefore, the judgment was reversed and the case remanded for another trial. See: *Mays v. Springborn*, 719 F.3d 631 (7th Cir. 2013).

Mays obtained new counsel following remand and a jury trial has been scheduled for May 20, 2014. This civil rights action, initially filed in 2001, has been pending for 13 years. ■

### Dictionary of the Law

Thousands of clear, concise definitions.  
See page 61 for ordering information.

# Eighth Circuit: Federal Sentence Consecutive to Later-Imposed State Sentence

by Mark Wilson

ON JUNE 6, 2013, THE EIGHTH CIRCUIT Court of Appeals held that a prisoner was not entitled to credit toward his federal sentence for time already served on state charges.

In March 2007, Charles Lee Elwell was arrested in Iowa. A federal indictment was issued against him several days later; Elwell was transferred to federal custody and the state court stayed its prosecution until the federal charges were resolved.

Elwell pleaded guilty to the federal charges and was sentenced to 66 months in prison in November 2007. The district court did not address whether the federal sentence would run concurrent or consecutive to any yet-to-be-imposed state sentence, as permitted by *Setser v. United States*, 132 S.Ct. 1463 (2012). [See related article in this issue of *PLN*].

Elwell was then returned to Iowa's custody and sentenced to two concurrent five-year prison terms. The state court expressed its intent to impose the state sentence concurrent with the already-imposed federal sentence.

Later discovering that Elwell's state and federal sentences were not concurrent, however, the state court resentenced Elwell to time served on February 6, 2009. As a result, Elwell's state sentence ended that day and he was transferred to the federal prison system.

The Bureau of Prisons (BOP) subsequently denied Elwell's request for credit for time served toward his federal sentence and for a *nunc pro tunc* designation pursuant to 18 U.S.C. § 3621. Elwell then filed a habeas corpus petition, which was denied by the district court.

On appeal, the Eighth Circuit first applied the primary jurisdiction doctrine, finding that Iowa, not the federal government, had primary jurisdiction of Elwell from March 2007 to February 6, 2009. "Pursuant to the doctrine of primary jurisdiction, service of a federal sentence generally commences when the United States takes primary jurisdiction and a prisoner is presented to serve his federal sentence, not when the United States merely takes physical custody of a prisoner who is subject to another sovereign's primary jurisdiction," the Court of Appeals wrote.

Under 18 U.S.C. § 3584(a), "multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently." As such, the appellate court found that "Elwell's federal sentence must run consecutive to his state sentence."

Given the express bar on double credit imposed by 18 U.S.C. § 3585(b), the Court of Appeals also rejected Elwell's challenge to the BOP's denial of federal

credit for time served while he was in state custody between March 2007 and February 6, 2009.

Finally, the Eighth Circuit held the BOP did not abuse its discretion in denying Elwell's request for a *nunc pro tunc* designation of the various facilities where he was incarcerated prior to February 6, 2009 as the locations for serving his federal sentence under 18 U.S.C. § 3621. See: *Elwell v. Fisher*, 716 F.3d 477 (8th Cir. 2013). ■

## inmateMAGS.com

formerly MyMagstore.com

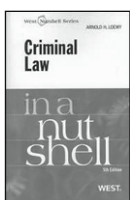
**Buy 1200 SINGLE Copies of Magazines • 1200 Subscriptions • VIP Service**  
**1800 Newspapers • Payment with Stamps • Prepaid Accounts**

Send \$3 or 10 Stamps for **\$0+ Page Full Catalog** (\$3 Discount Coupon Included)

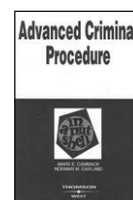
**InmateMAGS.com**  
 4208 University Way NE  
 Seattle, WA 98105

**www.inmateMAGS.com**  
 info@inmateMAGS.com  
 206-322-6397

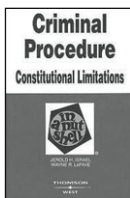
## New Titles Available in PLN's Bookstore



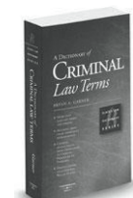
**Criminal Law in a Nutshell**, by Arnold H. Loewy,  
5th edition, 387 pages. **\$43.95**



**Advanced Criminal Procedure in a Nutshell**,  
by Mark E. Cammack and  
Norman M. Garland,  
2nd edition, 505 pages. **\$43.95**



**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFave,  
7th edition, 603 pages. **\$43.95**



**A Dictionary of Criminal Law Terms (Black's Law Dictionary® Series)**, by Bryan A. Garner, 768 pages. **\$33.95**

☐ Criminal Law in a Nutshell    ☐ Advanced Criminal Procedures in a Nutshell    ☐ Criminal Procedure  
☐ Dictionary of Criminal Law Terms

Amount enclosed (add \$6 S&H for orders under \$50; free shipping over \$50) \_\_\_\_\_

By ☐ check    ☐ new postage stamps    ☐ credit card    ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**PRISON LEGAL NEWS**

PO Box 1151 • Lake Worth, FL 33460  
 Tel [561] 360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

# Sexual Abuse by Oregon Jail Guard Nets Probation; Defense Attorney Blames Victim

**A** FORMER OREGON JAIL GUARD WAS SENTENCED to probation for sexually abusing a female prisoner after pleading guilty to a misdemeanor charge; his defense attorney blamed the incarcerated victim while the prosecutor defended the light sentence. The guard, Eddie James Miller, 60, was later accused of sexually harassing a co-worker.

As previously reported in *PLN*, Miller's 21-year career at the Inverness Jail in Portland, Oregon came to an end when he was accused of walking in on a 34-year-old female prisoner as she was using the bathroom in the jail's medical unit and forcing her to perform oral sex on him on January 9, 2012 [See: *PLN*, April 2012, p.1].

The distraught prisoner immediately reported the incident to detectives, according to Mike Schults, a chief deputy with the

Multnomah County Sheriff's Office.

Authorities said the woman's DNA was found on Miller, and she testified before a grand jury. On February 29, 2012, Miller was indicted on charges of official misconduct in the first degree and custodial sexual misconduct in the first degree.

The latter offense is a felony when an Oregon corrections employee or contractor engages in sexual intercourse with a prisoner; all other sexual contact constitutes the misdemeanor offense of custodial sexual misconduct in the second degree. Prisoners are not subject to prosecution, and consent is not a defense due to the power imbalance between guards and prisoners.

Miller entered a not guilty plea through his attorney, Lisa Ludwig. He was fingerprinted, photographed and booked into jail but released on pretrial supervision pending trial.

"We take these things very seriously," said Schults. During the investigation, Miller was initially put on paid leave but later placed on unpaid leave following the indictment. He resigned in April 2012. Schults said the female prisoner was transferred to the nearby Washington County Jail for her safety.

Miller was allowed to plead guilty to a misdemeanor charge of official misconduct in the first degree and sentenced to two years' probation on September 25, 2012. Multnomah County Deputy District Attorney Don Rees defended the plea agreement by claiming that Miller may in fact have been the victim of a scheme to obtain a cash settlement from the county.

Noting that the prisoner has a 15-year criminal history, including fraud and forgery convictions, investigators said they became suspicious of her intentions when her boyfriend and another prisoner reported that she had told them she was using Miller to get rich off the county. Several prisoners at

the Washington County Jail also informed officials that Miller told them of a plan to trap another guard in a similar scheme – as if jail guards are somehow unable to resist having sex with prisoners.

When Miller was sentenced, Ludwig called the victim a "con artist" but conceded that Miller was guilty of official misconduct. In addition to probation, Miller was ordered to pay a \$2,500 compensatory fine to the victim and forfeit his law enforcement certification.

Meantime, Portland attorney Jennifer Palmquist notified the county of the prisoner's intent to file suit. She said Ludwig's reference to her client as a con artist was nothing more than "blaming the victim." Palmquist stated her client wants to fix a broken system, noting that jail staff did not offer her medical treatment or counseling when she reported the sexual abuse.

Meantime, after Miller was placed on leave, a former co-worker at the Inverness Jail came forward to report that he had kissed and touched her in a sexually aggressive, inappropriate and non-consensual manner.

In January 2013, the former co-worker, Shireela Kennedy, filed a \$900,000 lawsuit against Miller, Multnomah County and Aramark Correctional Services, which contracts with the jail. The suit claimed that Miller began making inappropriate comments shortly after she began working at the facility in September 2011.

According to her lawsuit, Kennedy's supervisors destroyed a written sexual harassment complaint she had filed against Miller and ignored her numerous verbal complaints. The suit also alleged that Aramark employee Eddie Climer brushed off her reports of sexual harassment.

Kennedy said she began having panic attacks, depression and difficulty sleeping following Miller's inappropriate actions. She was terminated from her job in February 2012; since then, according to her complaint, she has suffered loss of earnings, job opportunities and other employment benefits.

Kennedy's lawsuit was resolved in October 2013 under undisclosed terms. See: *Kennedy v. Aramark*, Multnomah County Circuit Court (OR), Case No. 130101276. ■

Source: [www.oregonlive.com](http://www.oregonlive.com)

## TEXAS ONLY

Post-conviction State and  
Federal Habeas Corpus  
Parole Representation  
Family Law

### Ashley Burleson

Attorney and Counselor at Law  
1001 Texas Avenue, Suite 1400  
Houston, Texas 77002

## WINNING HABEAS CORPUS & POST CONVICTION RELIEF Revised 4th Ed. 2012

Main subject: Ineffective Assistance of Counsel-"IAC"

Atty Kent Russel writes: "Simply the best source for a quick review by PRP or CrR 7.8 motion. Covers all aspects of preparing a PRP, time bar, facial invalidity, Plea bargain, sentencing, incl. case law & rules."

<> A virtual law library in a book, major constructional issues

<> 6th Amendment & IAC, Duty to investigate

<> Forensics, Plea IAC, Jury Instructions

<> §2254 & 2254 Procedure, Clearly established law

## POST COVICTION RELIEF FOR WASH. STATE-Personal Restraint Petition

The only book for Wash. State prisoners who seek collateral review by PRP or CrR 7.8 motion. Covers all aspects of preparing a PRP, time bar, facial invalidity, Plea bargain, sentencing, incl. case law & rules.

### ORDER: (price incl. tax, plus S&H)

[ ] Winning Habeas Corpus...	\$ 59.50
[ ] Post Conviction Relief for Wash.	\$ 49.50
[ ] Both Books	\$ 95.00

To: FAST LAW PUBLISHING

Box 577, Upland CA 91785 On-line [www.fastlaw.org](http://www.fastlaw.org)



## FREE LOCAL NUMBER WITH SENTEL

*Get a local Number & Save up to 85% on Prison Calls with Sentel.*

*Save on International Calls with Sentel*

Below is a summary of the Great plans we offer:

FREE USA PLAN	USA -100	USA UNLIMITED	INTERNATIONAL
<b>Features:</b>	<b>Features:</b>	<b>Features:</b>	<u>Features:</u>
Price: \$0.00 20 Free Minutes Risk Free Sign Up Additional Minutes @ 6 cent	Price: \$4.99 100 Minutes Additional lines @ \$2.5 Additional Minutes @ 5 cents	Price: \$9.99 Unlimited USA Fair Minute Usage Limited Time offer Only Hurry Up !!! You have it You keep it	Price for 1 <sup>st</sup> line: \$1 Add a line: 50 cents Rates Based Upon Destination Calls as low as 10 cents/mn Guaranteed lowest rates

## NÚMERO LOCAL GRATIS CON SENTEL

Obtenga un número de locales y ahorra hasta un 85% en la prisión de llamadas con Sentel.

*Ahorra en llamadas internacionales con Sentel*

A continuación se muestra un resumen de los Grandes planes que ofrecemos:

GRATIS EE.UU. PLAN	EE.UU. -100	EE.UU. ILIMITADO	INTERNACIONAL
<u>Características:</u>	<u>Características:</u>	<u>Características:</u>	<u>Características:</u>
Precio: \$ 0.00 20 minutos gratis Riesgo Inscribirse Minutos adicionales @ 6 cents	Precio: \$ 4.99 100 Minutos Las líneas adicionales @ \$ 2,5 Minutos adicionales @ 5 cents	Precio: \$ 9.99 Ilimitado EE.UU. Uso de minutos Fair	Precio para 1 <sup>a</sup> línea: \$ 1 Agregue una línea: 50 cents de dólar Precios basados en la Destino Las llamadas de tan solo 10 cents Garantizado los mejores precios

**We accept debit and credit card payments, institutional checks, bank deposits and paypal**

Sentel, Sentel  
9550 S. Eastern Ave Ste 253  
Las Vegas, NV 89123  
Ph: 702-430-9445  
Email: [sentel.nv@gmail.com](mailto:sentel.nv@gmail.com)  
Website: [www.sentelinmatecall.com](http://www.sentelinmatecall.com)

# Federal Court Must Give Reasons for Special Conditions of Supervised Release

by David Reutter

**T**HE SIXTH CIRCUIT COURT OF APPEALS has reversed a district court's imposition of four special conditions of supervised release, due to the court's failure to explain its reasons for imposing them.

Rashan R. Doyle was convicted in New York of attempted sexual abuse in the first degree; as a result of that qualifying felony conviction, the Sex Offender Registration and Notification Act required him to register as a sex offender. When Doyle moved to Tennessee, however, he failed to register.

Doyle pleaded guilty to a charge of failure to register as a sex offender in violation of 18 U.S.C. § 2250(a). A federal district court in Tennessee sentenced him to 37 months in prison followed by ten years of supervised release, plus a \$3,000 fine.

The term of supervised release included four special conditions that prohibited Doyle from possessing any pornography, even legal pornography; having direct or indirect contact with any child under eighteen, including loitering near school yards, playgrounds, swimming pools, arcades or other places frequented by children; using sexually-oriented telephone or computer-based services; and possessing or using a computer with access to any "on-line service" or other forms of wireless communication without the approval of his probation officer.

Because Doyle did not object to the special conditions at sentencing, the Sixth Circuit analyzed them under the plain-error standard. The appellate court held that "a district court errs if it fails, at the time of sentencing, to state in open court its rationale for mandating a special condition of supervised release." In this case, the district court had erred procedurally because it failed to explain its reasoning for the special conditions at issue; the Court of Appeals found the error was clear because the record did not show why the conditions were imposed.

Further, the district court's failure to explain its rationale for the special conditions "may have had a substantial influence on the outcome of the proceedings." The Sixth Circuit wrote, "there is a reasonable probability that the court may not have imposed the special conditions if it had fulfilled its obligations

to explain the basis for the conditions or at least made sure the record illuminated the basis for the conditions." Finally, as the special conditions were "likely more severe than the ones the district court would have imposed had it fulfilled its obligation to explain its reasoning," the error was not harmless and affected the fairness, integrity or public reputation of the proceedings.

The four special conditions of Doyle's supervised release were vacated and the case remanded for resentencing. The district court was reminded that if it does impose special conditions, they "must be tailored

to the specific case before the court." The Sixth Circuit noted that it did not see how some of the special conditions related to the nature and circumstance of Doyle's offense of failure to register; the one exception was contact with children or being in places where children congregate, but that provision should not apply to Doyle's own children. See: *United States v. Doyle*, 711 F.3d 729 (6th Cir. 2013).

Following remand, Doyle was resentenced on August 30, 2013 to 37 months in prison and five years of supervised release, plus a \$3,000 fine. ■

## Idaho Supreme Court Upholds Dismissal of § 1983 Claims in Jail Suicide Case

by Mark Wilson

**T**HE IDAHO SUPREME COURT HAS AFFIRMED a lower court's dismissal of § 1983 claims stemming from the death of a detainee who committed suicide at the Ada County Jail (ACJ).

On September 28, 2008, Bradley Munroe was arrested for robbery. He was hospitalized because he was intoxicated, uncooperative and exhibiting odd behavior. Munroe claimed he would commit suicide if released, but the hospital cleared him and he was transported to ACJ.

During the booking process, Munroe was screaming, being rowdy and not making sense. Given his bizarre behavior, booking was suspended until the next morning and he was placed in a holding cell for observation.

James Johnson, a psychiatric social worker at the jail, assessed Munroe's suicide risk. Johnson concluded that Munroe's risk level was insufficient to justify admitting him to ACJ's Health Services Unit (HSU).

After Johnson's assessment, Munroe answered some suicide risk questions in the affirmative during the booking process. Guards did not contact staff in the HSU, however, based on Johnson's evaluation.

Upon his request, Munroe was held in a single cell in protective custody. Guards were required to conduct well-being checks every 30 minutes.

At around 9 a.m. on September 29,

2008, Munroe's mother, Rita Hoagland, called ACJ to express concerns that her son was suicidal. Hoagland's concerns were reported to Johnson, but he did not alter his initial assessment.

That evening, Munroe was found hanging by a bed sheet from the top bunk in his cell. Efforts to revive him were unsuccessful.

On January 23, 2009, Hoagland filed suit in state court, in her personal capacity and as the representative of Munroe's estate, claiming that guards were watching football when her son committed suicide. The initial complaint alleged § 1983 claims, state law torts and wrongful death claims.

When the defendants moved for summary judgment, Hoagland withdrew all of her state law claims and proceeded with only the § 1983 claims.

The trial court granted qualified immunity to Johnson and dismissed Hoagland's claims against the other defendants. It awarded \$15,815.31 to the defendants in costs as a matter of right and \$77,438.12 in discretionary costs, but not attorneys' fees.

On appeal, the Idaho Supreme Court found "the district court properly held that Munroe's estate is not a valid § 1983 plaintiff," because "Munroe's § 1983 claim abated with his death."

"This Court has clearly held that

§ 1983 is a personal cause of action. Furthermore, there is no federal law governing the issue of abatement. Therefore, the law of Idaho governs to the extent that it is not inconsistent with federal law. At common law in Idaho, a personal tort cause of action abates with the death of the plaintiff.”

The state Supreme Court also held that Hoagland had “failed to establish a violation of her constitutional rights underlying

her § 1983 claim,” as she did not prove the defendants intentionally interfered with her relationship with Munroe.

Given Hoagland’s waiver of her state law wrongful death claim, the Court found that judicial estoppel barred her from asserting “that her § 1983 claim incorporates the wrongful death claim.”

The Supreme Court upheld the trial court’s denial of attorneys’ fees but reversed

the discretionary award of costs to the defendants, noting that “the district court failed to make adequate findings.” On remand, the lower court was directed to reconsider the discretionary costs and make “express findings justifying the award.” The Court also reduced to \$14,897.31 the costs awarded to the defendants as a matter of right. See: *Hoagland v. Ada County*, 154 Idaho 900, 303 P.3d 587 (Idaho 2013). ■

## Washington PRA Violations Result in Costs and Penalties

by Mark Wilson

THE WASHINGTON COURT OF APPEALS, Division Two, held on July 30, 2013 that a state agency violated Washington’s Public Records Act (PRA) by failing to respond to a prisoner’s request within the statutory time limit and by redacting information not exempt from disclosure. The appellate court instructed the lower court to determine on remand the amount of costs and penalties to be awarded as a result of the violations.

On July 20, 2009, Monroe Correctional Complex prisoner Derek E. Gronquist sent a PRA request to the Washington State Department of Licensing (DOL) for the master business license application of a specified company.

The DOL failed to respond within five days in violation of the PRA. When the agency responded to Gronquist’s request on July 31, 2009, it provided the requested document but “redacted much of the application without providing a statutory basis for the redactions.”

Gronquist filed suit in state court, alleging that the DOL had violated the PRA by providing a redacted copy of the application. Following an inspection of the redacted information, the trial court granted summary judgment to the DOL, holding that the redacted material was not subject to disclosure but protected as confidential under Washington law.

The Court of Appeals reversed, holding that: 1) the DOL did not respond within the statutory time frame; 2) none of the redacted information was exempt when it was requested; 3) the DOL failed to provide timely or adequate justification for the redactions; and 4) the trial court improperly refused to file the deposition transcripts offered by Gronquist in support of his motion for sanctions and in response to the DOL’s summary judgment motion.

Due to a 2011 change that transferred the responsibility for master business licenses from the DOL to another state agency, the appellate court declined to order disclosure of the unredacted application requested by Gronquist. It remanded, however, instructing “the trial court to consider the imposition of costs and penalties after consideration of the entire record, including the depositions to be filed by the trial court.” Gronquist was also awarded his costs on appeal.

The Court of Appeals did not address

the applicability of RCW § 42.56.565(1), effective July 22, 2011, which specifies that a court shall not award penalties for violations of the PRA “to a person who was serving a criminal sentence in a state, local, or privately operated correctional facility on the date the request for public records was made, unless the court finds that the agency acted in bad faith in denying the person the opportunity to inspect or copy a public record.” See: *Gronquist v. Washington State Department of Licensing*, 175 Wn. App. 729, 309 P.3d 538 (Wash. Ct. App. 2013). ■

### Revealing the Secrets of Kabbalah Watch Your Life Make Sense

Studying Kabbalah is a fascinating journey. It changes our perspective on the world and the people around us, revealing aspects within us that we never knew existed. Kabbalah states very simply that when we need to know how to connect to the Upper Force, we will find our inner compass. This is the goal of Kabbalah – to help us make and sustain direct contact with the Creator. When we do, we will need no further guidance.

Free interactive correspondence course.

Please send your letters to:  
Kabbalah Research Institute  
**Attn: Mikhail Plaksin**  
P.O. Box 670263  
Flushing, NY 11365  
Ph: 800-540-3234

# Prisoner Organ Transplants, Donations Create Controversy

**P**RISON OFFICIALS IN SEVERAL STATES ARE mulling over two sides of the same coin with respect to organ transplants for prisoners: first, the eligibility and cost of such medical procedures, and second, whether prisoners should be allowed to donate their organs.

## Prisoners in Need of Organ Transplants

IN RHODE ISLAND, A LIVER TRANSPLANT performed on a 27-year-old prisoner left officials defending the cost of the life-saving operation.

A spokeswoman for the Rhode Island Department of Corrections (RI DOC) said Jose Pacheco, who is serving a 6½-year sentence for robbery, became the first prisoner in the state to receive a liver transplant. The August 1, 2012 operation was performed in Boston because Rhode Island hospitals don't currently perform such transplants.

The procedure can cost up to almost \$1 million, with the state required to pick up 40% of the bill, according to court precedent.

But the RI DOC said in a statement that it was unclear how much of Pacheco's hospital bills the state will actually pay because it's possible he qualified for Social Security benefits before he was incarcerated. In that case, Medicaid would cover about 50% of the cost.

"To date, the Department has paid only for the inmate's supervision in the hospital under an interagency agreement with the [Massachusetts Department of Corrections]," said RI DOC spokeswoman Tracey Zeckhausen. "That totaled just over \$110,000" as of June 2012, she added.

"It is a sort of lose-lose situation for the taxpayer," said state Senator Dawson Hodgson. "It can amount to torture if you let someone die without healthcare. At the same time, \$1 million is a tremendous amount of taxpayer resources, whether it is coming from the state or federal government, put into any person's healthcare – never mind someone who is a drug dealer and a thief."

Pacheco's case is not the first to generate controversy about prisoners receiving organ transplants, of course.

A California prisoner received a heart transplant in January 2002 at a cost of \$1 million – which included follow-up care –

according to Russ Heimerich, a spokesman for the California Department of Corrections and Rehabilitation (CDCR). At the time, Heimerich said the 32-year-old prisoner was suffering from a fatal heart condition. [See: *PLN*, Sept. 2002, p.12].

Less than a year later the heart transplant recipient had died, the victim of what prison officials called a failure to adhere to the demanding medical protocols that follow such an operation. [See: *PLN*, Oct. 2003, p.28]. Transplant patients typically require close monitoring and a wide range of daily medications to prevent organ rejection and fight infections.

In 2004, a California federal court ordered the CDCR to contact transplant centers in the state to determine whether they would accept a prisoner as a candidate for a liver transplant. See: *Rosado v. Alameida*, 359 F.Supp.2d 1341 (S.D. Cal. 2004).

New York state prisoner Wilfredo Rodriguez received a \$400,000 liver transplant in November 2005. [See: *PLN*, Feb. 2006, p.40]. When another New York prisoner, convicted of rape, was being evaluated in 2011 for a heart transplant, state lawmakers demanded a review of the policies that permitted such operations at taxpayers' expense.

"These reports raise a multitude of questions that demand and deserve answers for New York taxpayers, potential organ donors, and law-abiding families who are still waiting for life-saving transplants," said state Senator Michael Nozzolio. "We cannot allow law-abiding citizens to be denied transplants in favor of dangerous violent offenders, convicted of heinous crimes, who may never leave prison."

Apparently, Nozzolio was unaware that the provision of adequate healthcare by prison officials – including organ transplants when needed – is a Constitutional requirement. The U.S. Supreme Court ruled in *Estelle v. Gamble*, 429 U.S. 97 (1976) that denying necessary medical care to prisoners constitutes cruel and unusual punishment in violation of the Eighth Amendment.

"You get a liver transplant because you meet the very strict criteria, not because we like you," remarked Dr. David Kaufman, the medical director at Strong Memorial Hospital, which performed the liver transplant for Rodriguez.

The New York prisoner seeking a heart transplant, Kenneth Pike, was screened for

the operation but later declined the transplant for reasons that were not reported.

Meanwhile, the United Network for Organ Sharing (UNOS), a non-profit organization that manages the organ transplant system in the United States under a contract with the federal government, has taken the position that prisoners should not be precluded by their carceral status from receiving transplants, and should be eligible for such procedures to the same extent as non-incarcerated citizens.

People usually receive organ transplants according to their position on the waiting list, which is based on the severity of their medical condition. There are currently over 121,000 people on organ waiting lists nationwide.

## When Prisoners Want to Donate Organs

AT THE OPPOSITE END OF THE SPECTRUM, controversy has erupted in several states about the ability of prisoners – including those on death row – to donate their organs, and the appropriateness of such donations.

In Mississippi, Governor Haley Barbour commuted the life sentences of sisters Gladys and Jamie Scott in December 2010, on the condition that Gladys donate one of her kidneys to Jamie. Both prisoners, who had served 16 years for an \$11 armed robbery, were released in January 2011; Barbour's decision may have been partly motivated by fiscal concerns, as Jamie's dialysis was reportedly costing the state prison system around \$190,000 per year. It is unclear whether the post-release kidney transplant occurred, as it was initially postponed for medical reasons. [See: *PLN*, May 2011, p.34].

Utah enacted the Inmate Medical Donation Act in March 2013, which allows voluntary organ donations from prisoners who die "while in the custody" of the Department of Corrections. The law states that prison officials may "release to an organ procurement organization ... the names and addresses of all inmates who complete and sign the document of gift form indicating they intend to make an anatomical gift."

In Ohio, Governor John R. Kasich placed the November 2013 execution of death row prisoner Ronald Phillips on hold in order to study the feasibility of allowing Phillips and other condemned prisoners to donate their organs. Phillips was sentenced



to die for the 1993 rape and beating death of his girlfriend's 3-year-old daughter.

"Ronald Phillips committed a heinous crime for which he will face the death penalty," the governor said in a statement. "I realize this is a bit of uncharted territory for Ohio, but if another life can be saved by his willingness to donate his organs and tissues then we should allow for that to happen."

Phillips' request to donate his organs to sick relatives or others who need them was initially rejected by state prison officials. According to the governor's office, Phillips' non-vital organs, such as a kidney, would be removed and he would then be returned to death row pending his execution, which was re-scheduled for July 2014.

On March 21, 2014, Ohio Department of Rehabilitation and Correction chief counsel Stephen Gray said Phillips would not be able to donate his organs, as he could not do so in time to allow for a 100-day recuperation period prior to his new execution date.

Some people worry about the ethics of allowing death row prisoners to donate their organs. Jeff Orlowski, who heads Life Share Transplant Services, compared the process to organ harvesting – a practice that has been condemned in China, which until only recently harvested organs from executed prisoners. [See: *PLN*, March 2013, p.27; Sept. 2009, p.35; Jan. 2008, p.16; Sept. 2007, p.24].

Life Share Transplant Services keeps track of the organ donation registry in Oklahoma, where one state lawmaker predicted widespread support for his proposal to allow death row prisoners to donate their organs.

"I don't think it will be a tough sell," state Rep. Joe Dorman said in November 2013. "I think with the strong stance that we have with members of the legislature being pro-life, I certainly see this as a pro-life idea because you're saving lives with the

actions of that prisoner seeking redemption" by donating his organs.

"You can't put a price on life," he added, apparently without irony.

Rep. Dorman said organs donated by willing prisoners would benefit people waiting for transplants – especially for organs that are difficult to find, *The Oklahoman* reported. His proposed legislation would allow prisoners to be anesthetized, have their organs removed and then be placed on life support until their executions can be carried out. Oklahoma uses lethal injection, which renders organs useless for post-execution transplants.

"The only options for executing someone to obtain vital organs is to either shoot them in the head or chop their head off and have a team of doctors ready to step in immediately," noted Arthur Caplan, professor of medical ethics at NYU Langone Medical Center.

Oregon death row prisoner Christian Longo has pushed the issue of organ donation for several years. "If I donated all of my organs today, I could clear nearly 1 percent of my state's organ waiting list. I am 37 years old and healthy; throwing my organs away after I am executed is nothing but a waste," he wrote in a *New York Times* editorial on March 5, 2011. Prison officials denied his request.

Longo, who founded an organization called Gifts of Anatomical Value from Everyone (GAVE), renewed his efforts to donate his organs in March 2014, offering to give a kidney to Kevin Gray, an Oregon resident with kidney failure who is on dialysis.

"I don't care if you're incarcerated, if you're my neighbor – if you're willing to donate an organ to save a life it's very breathtaking and I'm very grateful," Gray said, although he later rejected the offer after learning that Longo was on death row.

"The department looks at organ donation on a case-by-case basis," stated Oregon

Department of Corrections spokeswoman Jennifer Black. "If someone needs a bone marrow transplant or their mother needs a kidney and there's a match, then there's no reason that can't go forward," she said. "But it's not just a blanket 'yes.' All offenders can give part of their body away to somebody else. It has to be for the right reasons and the right person and all that."

Policies related to organ donations by prisoners, including those on death row, vary from state to state.

"There have been several instances in the United States within the last 20 years where condemned prisoners have requested to become organ donors, either upon their execution as a deceased donor or prior to execution as a living donor," UNOS said in a November 14, 2013 statement posted on the organization's website. "Ultimately the correctional authority must decide whether to allow any inmate to be evaluated for donation, and an organ procurement organization and/or transplant center must make medical decisions whether to accept any person as a donor and allow a transplant to proceed."

UNOS noted that organ donations from prisoners "present special concerns and vulnerabilities, and appropriate precautions are necessary to prevent the potential for coercion" – such as offering early release or other incentives in exchange for prisoners' organs. ■

Sources: *www.630wpro.com*, *Providence Journal*, *www.osv.com*, *CBS News*, *NBC News*, *United Press International*, *www.waynepost.com*, *Associated Press*, *The New York Times*, *www.kgw.com*, *www.wamc.org*, *New York Daily News*, *NBC News*, *www.unos.org*, *The Oklahoman*, *www.gavelife.org*, *Statesman Journal*

## WHEN IT IS YOUR FAMILY'S FUTURE, EXPERIENCE MATTERS

### STATE AND FEDERAL POST-CONVICTION AND APPEALS

Licensed since 1995, hundreds of appellate briefs and habeas petitions, capital qualified for habeas and appeals in Texas and U.S. Southern District of Texas, Motions for New Trial, Rule 35 and 60b motions, re-sentencing and arrest of judgment.

Call or write the Law Offices of Patrick F. McCann, 713-223-3805.  
909 Texas Ave, Ste 205, Houston, Texas 77002 • writlawyer@justice.com  
**Serious financial inquiries only.**



**INMATE**  
CONNECTIONS.com  
& ConvictPenPals.com!

465 NE 181st, #308 Dept. PLN Portland OR 97230  
Since 2002 – Write for FREE brochure!

# Oklahoma Jailers Not Immune from Excessive Force Claims

THE OKLAHOMA SUPREME COURT HAS held that jail officials are not immune from liability for excessive force claims under the Oklahoma Governmental Tort Claims Act (OGTCA).

On May 17, 2011, Daniel Bosh was detained at the Cherokee County Detention Center for failure to pay a traffic ticket. Video surveillance showed him standing at the booking desk with his hands cuffed behind his back.

Bosh reportedly complained to guard Gordon Chronister, Jr. that his handcuffs were too tight; in response, Chronister grabbed him from behind and slammed his head onto the booking desk. He then placed Bosh's head under his arm and fell backwards, causing Bosh to strike the top of his head on the floor.

According to the video footage, other guards quickly joined the attack. They moved Bosh to a shower area outside the camera's view, where they continued to assault him for an undisclosed period of time.

"The video speaks for itself," said Bosh's attorney, Mitchell Garrett.

Guards then left Bosh to languish in a cell without medical treatment for two days before taking him to a local hospital.

Having suffered fractured vertebrae, Bosh required surgery to fuse several discs along his spinal cord.

Chronister later claimed that he thought Bosh was going to spit on him; based on that assertion, and the fact that Bosh had a long criminal history that damaged his credibility, prosecutors did not pursue criminal charges against Chronister or other guards involved in the incident.

On September 29, 2011, Bosh filed a 42 U.S.C. § 1983 action in state court against the Cherokee County Governmental Building Authority ("Authority"), which operates the jail, and against Assistant Jail Administrator T.J. Girdner and the guards who had assaulted him. The defendants removed the case to federal court.

The federal district court dismissed Bosh's state tort claims as being barred by the OGTCA, 51 O.S. 2011 §§ 151 *et seq.*, which "appears to allow the state, or, in this case the Authority, to elude tort liability when its employees beat and injure a citizen who is detained at one of its facilities."

Nevertheless, the district court allowed Bosh "to amend his complaint to assert a claim of excessive force" under Article 2,

§ 30 of the Oklahoma Constitution. The defendants moved to dismiss the constitutional claim, arguing that it too was barred by the OGTCA. On August 30, 2012, the federal court certified three questions of law to the Oklahoma Supreme Court related to the scope and application of the OGTCA.

In answering those questions, the Supreme Court first found that Article 2, § 30 "provides a private cause of action for excessive force, notwithstanding the requirements and limitations of the OGTCA." Construing the OGTCA "as providing blanket immunity ... would ... render the Constitutional protections afforded the citizens of this State as ineffective, and a nullity," the Court explained. Thus, excessive force claims brought under Article 2, § 30 are not barred by the OGTCA.

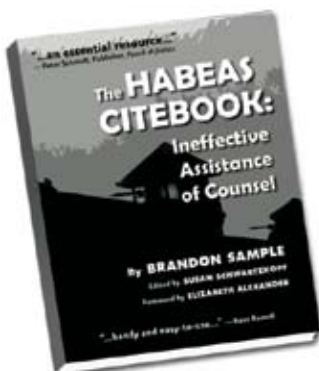
The Supreme Court then held that the cause of action it recognized with respect to excessive force claims under Article 2, § 30 applies retroactively "to all matters which were in the litigation pipeline, state and federal, when *Bryson v. Oklahoma County*, 2011 OK CIV APP 98, 261 P.3d 627 [(Okla. Ct. App. 2011)] was decided as well as any claims which arose when *Bryson* was decided."

Finally, the Court found that in regard to such claims under Article 2, § 30 of the Oklahoma Constitution, "respondeat superior applies to hold municipal corporations liable for the actions of their employees where those employees are acting within the scope of their employment."

Although the ruling was superficially amended and corrected on June 28, 2013, the outcome remained the same. See: *Bosh v. Cherokee County Governmental Building Authority*, 2013 OK 9, 305 P.3d 994 (Okla. 2013), *rehearing denied*.

Bosh's suit alleging excessive force claims remains pending before the federal district court, though it is now being litigated by his estate. On March 17, 2014, Bosh's wife notified the court that he had died. See: *Bosh v. Cherokee County Governmental Building Authority*, U.S.D.C. (E.D. Okla.), Case No. 6:11-cv-00376-JHP. ■

Additional source: [www.kjrh.com](http://www.kjrh.com)



## FREE BOOK!

Get *The Habeas Citebook* with purchase of a 4-year subscription to *Prison Legal News*. Offer good for new subscriptions and renewals.

Special limited time only! All sales final and no refunds. Order now for this great deal worth \$49.95.

Prison Legal News • PO Box 1151 • Lake Worth, FL 33460  
Tel [561] 360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

# WELCOME TO KRASNIA BABES & KRASNIA STUDS WORLD

TENS OF THOUSANDS OF THE HOTTEST AND MOST SCANDALOUS BABES&DUDES FOUND ON THE PLANET.  
EACH CATALOG PAGE HAS 120 BEAUTIFUL GIRLS OR BOYS POSING JUST FOR YOU!  
ORDER ONE CATALOG PAGE FOR ONLY \$4.50 OR FOR 10 U.S. FOREVER STAMPS WITH AN SASE ENCLOSED.  
WE WILL SEND YOU VOLUME ONE. EACH ADDITIONAL VOLUME THE SAME PRICE!

## HELP US TO HELP YOU!

WE ARE MORE THAN HAPPY TO ANSWER E-MAIL INQUIRES HOWEVER, DUE TO MAILING COST AT \$0.46 CENTS A LETTER, PLEASE ENCLOSE AN SASE WITH YOUR QUESTIONS, OTHERWISE NO REPLIES!

## WHAT ABOUT OUR PRICES AND POLICIES

COLOR PRINTS ON 4x6 GLOSSY PHOTO PAPER AS LOW AS \$0.35 CENTS PER PRINT ON ORDERS OVER 500 SHIPPED ACCORDING TO POLICY: 25 PICTURES PER ENVELOPE EVERY 24 HOURS. S&H \$2.00 PER ENVELOPE.

## METHOD OF PAYMENT/CONTACT INFORMATION

U.S. POSTAL SERVICE MONEY ORDERS-STATE & FEDERAL CORRECTIONAL INSTITUTIONAL CHECKS

PAYABLE ONLY TO: KRASNIA L.L.C.

EQUATION FOR FIRST CLASS U.S. FOREVER STAMPS

BRAND NEW FLAT BOOK FOR ALL ORDERS AT THE RATE OF \$6.00 PER FLAT BOOK.

WE RESPOND TO OUR CLIENTS NEEDS AND TRY TO HELP THE BEST WE CAN.

OUR SEASONAL SPECIALS MEAN A KICKOFF OF SAVINGS!

### COLOR CATALOG DISCOUNT SALE ONE COLOR CATALOG OF 120 BABES IN CLASSIC OR NUDE LINES \$4.50

PLEASE INCLUDE  
A SELF-ADDRESSED STAMPED  
(2-FIRST CLASS STAMPS) ENVELOPE.  
QUANTITY BUYS:

5-14 CATALOGS =10% OFF OUR REGULAR PRICE  
15 CATALOGS =15% OFF OUR REGULAR PRICE  
20 CATALOGS =20% OFF OUR REGULAR PRICE  
25 CATALOGS =25% OFF OUR REGULAR PRICE  
30 CATALOGS =30% OFF OUR REGULAR PRICE  
35 CATALOGS =35% OFF OUR REGULAR PRICE  
40 CATALOGS =40% OFF OUR REGULAR PRICE  
45 CATALOGS =45% OFF OUR REGULAR PRICE  
50 CATALOGS =50% OFF OUR REGULAR PRICE  
BE SURE TO SPECIFY CLASSIC OR NUDE BABES!

150 VOL. OF KRASNIA BABES CLASSIC LINE  
150 VOLUMES OF KRASNIA BABES NUDE LINE

**\$24.95 S&H FREE**  
**FOR GRAB BAG OF**  
**50 PHOTOS**  
**FROM ALL OUR CATALOGS**  
**SPECIFY RACE AND MAIN**  
**AREA OF YOUR INTERESTS**  
**WE WILL PICK SELECTION**  
**FOR YOU**  
**BONUS 1 COLOR CATALOG**  
**PAGE OF 120 BABES**

### LOOSE STAMPS FOR LOOSE BABES

KRASNYA LOOSE STAMP GRAB BAG SPECIAL  
10 LOOSE BABES.....30 STAMPS  
25 LOOSE BABES.....75 STAMPS  
50 LOOSE BABES.....150 STAMPS  
ALL STAMPS MUST BE 1ST CLASS STAMPS  
IN LIKE NEW CONDITION!  
SPECIFY NUDE OR BOP-SAFE (NO VISIBLE NUDITY)  
WE WILL PICK SELECTION FOR YOU

**KRASNYA BABES HAS SPRUNG SALE!**  
**FREE SAMPLE CATALOG FROM KRASNIA!**  
**120 BABES IN EACH CATALOG**  
**ENCLOSE ONE SASE WITH TWO FIRST**  
**CLASS STAMPS! 1 CAT PER CUSTOMER**  
**PLEASE SPECIFY MALE OR FEMALE BABES**  
**NUDE OR BOP-FRIENDLY**

**3 BRAND NEW FLAT BOOKS OF FOREVER**  
**STAMPS FOR GRAB BAG OF 45 PHOTOS**  
**FROM ALL OUR CATALOGS. SPECIFY RACE**  
**AND MAIN AREA OF YOUR INTERESTS**  
**WE WILL PICK SELECTION FOR YOU**  
**BONUS 1 COLOR CATALOG OF 120 BABES**  
**PLEASE INCLUDE 6 FOREVER STAMPS**  
**WITH YOUR ORDER FOR S&H**

KRASNYA L.L.C.  
P.O. BOX 32082  
BALTIMORE, MD 21282  
EMAIL AND CORRLINKS REQUESTS ACCEPTED AT:  
KRASNABABES@HOTMAIL.COM

WE'D LIKE TO START THE HOLIDAYS RIGHT THIS YEAR!  
THE WAY TO DO THAT IS BY SENDING YOU INCREDIBLE VALUES  
IT'S ONE THING TO TALK THE TALK, ANOTHER TO WALK THE TALK

50 GREAT BABES 0.50 CENTS EACH!—\$25.00  
100 GREAT BABES 0.45 CENTS EACH!—\$45.00  
200 GREAT BABES 0.40 CENTS EACH!—\$80.00  
300 GREAT BABES 0.40 CENTS EACH!—\$120.00  
500 GREAT BABES 0.35 CENTS EACH!—\$175.00

STANDARD TERMS & CONDITIONS APPLY – \$2.00  
PER ENVELOPE (25 PHOTO) FOR SHIPPING AND HANDLING!

WAIT!  
YOU SAY YOU DON'T HAVE ENOUGH BABE CHOICES  
OR CATALOGS? YOU NEED CATALOGS?  
PREPAY YOUR ORDER AND WE WILL SEND YOU  
FREE COLOR CATALOGS!  
GREAT DEAL, BUT HOW MANY CATALOGS?

FOR EVERY 100 BABES WE'LL SEND YOU  
240 BABES TO CHOOSE FROM!

### ORDER

50 BABES.....ONE SINGLE CATALOG  
100 BABES.....ONE DOUBLE CATALOG  
200 BABES.....TWO DOUBLE CATALOGS  
300 BABES.....THREE DOUBLE CATALOGS  
500 BABES.....FIVE DOUBLE CATALOGS

KRASNYA IS PROUD TO INTRODUCE AT FANTASTIC INTRODUCTORY PRICES  
THE CONNOISSEUR'S COUTURE "CACHE TWO-FIVE COLLECTION"  
OF INTERNATIONAL ADULT FILM STARS

TWELVE PACKAGES OF 25 NUDE AND NON-NUDE POSES,  
AVAILABLE ONLY IN OUR "CACHE TWO-FIVE" COLLECTION.

### "CACHE TWO-FIVE"

"CACHE TWO-FIVE" IS AVAILABLE IN TWELVE (12) SPECIALLY PRICED PACKAGES  
OF 25 POSES IN NUDE AND NON-NUDE POSES.

PLEASE SPECIFY ON YOUR ORDERS IF YOU WANT NUDE OR NON-NUDE PACKAGES  
AND WHAT COLLECTION NUMBER YOU'D LIKE.

COLLECTIONS ARE NUMBERED 01-12 FOR EXAMPLE ON YOUR ORDER YOU'D WRITE:  
\*\*\*NUDE CACHE TWO-FIVE PACKAGE 01 & 02\*\*\*

REMEMBER THERE ARE TWELVE (12) COMPLETELY DIFFERENT PACKAGES OF 25 BABES,  
THERE ARE NO DUPLICATES IN ANY OF THE 12 PACKAGES.

600 BEGUILING BEAUTIES, ALL BRAND NEW ADDITIONS TO OUR LINE AND AVAILABLE ONLY  
IN OUR CACHE "TWO-FIVE" PACKAGES! 300 NUDES AND 300 NON-NUDE BEAUTIES  
CAPTURE YOUR OWN COLLECTION OF KRASNIA'S "CACHE TWO-FIVE" SELECTIONS IN  
INDIVIDUALIZED PACKAGING OF 25 RARE AND EXQUISITE BREATH-TAKING BEAUTIES.

THE CONNOISSEUR'S COUTURE COLLECTION OF "CACHE TWO-FIVE" BRINGS YOU  
25 BEAUTIES IN EACH "CACHE TWO-FIVE" PACKAGE FOR ONLY \$12.95 PER PACKAGE

LIMITED TIME SPECIAL \*\*\*\*\* \$59.95\*\*\*\*\*

PLUS S&H FOR 6 "CACHE TWO-FIVE" PACKAGES OF THE NUDE OR NON-NUDE COLLECTIONS  
150 BEAUTIES

IMAGINE 150 OF THESE EXCITING AND EXQUISITE BEAUTIES  
FOR A RIDICULOUSLY LOW PRICE OF

\*\*\*\*\*\$59.95\*\*\*\*\* PLUS \$12.00 SHIPPING AND HANDLING CHARGE.

ADD \$2.00 FOR SHIPPING AND HANDLING PER "CACHE TWO-FIVE" PACKAGE ORDERED.

YOU MUST SPECIFY NUDE OR NON-NUDE PACKAGES

IF NOT SPECIFIED NON-NUDE WILL BE SHIPPED AUTOMATICALLY

ALL OF OUR NORMAL POLICIES APPLY

FOR KRASNIA CLIENTS WHO WORK THE YARDS;  
HAVE WE GOT A GREAT OPPORTUNITY FOR YOU...GRAB BAG  
**MR. HUSTLE GRAB BAG BARGAIN DAYS**

ONLY \$0.25 CENTS PER BABE

5 GRAB BAG MINIMUM PURCHASE REQUIRED  
\$2.00 SHIPPING AND HANDLING PER BAG

25 AWESOME BABES PER BAG AT ONLY \$6.25 PER BAG  
YOU MUST BUY AT LEAST 5 GRAB BAGS OR 50 GRAB BAGS.  
THIS\*\*\*GRAB BAG BARGAIN\*\*\* IS NOT GOING TO BE OFFERED  
AGAIN THIS YEAR. **SO STOCK UP NOW!**

AS YOU KNOW YOU GET AN ARRAY OF 25 GORGEOUS BABES  
YOU CAN ONLY CHOOSE EITHER MALES OR FEMALES,  
ALL NUDES OR BOP SAFE...THE INDIVIDUAL SELECTIONS COME  
FROM OUR BEST CATALOGS!!!

YOU MAY WANT TO SIT DOWN FOR THIS BONUS BARGAIN!  
OUR BABES CATALOGS SPECIAL OF THE DECADE

— 5 COLOR CATALOGS FOR \$6.00 —  
— 10 COLOR CATALOGS FOR \$12.00 —  
— 15 COLOR CATALOGS FOR \$18.00 —  
— 20 COLOR CATALOGS FOR \$24.00 —

OUR CATALOGS SPECIAL AVAILABLE WHEN YOU PURCHASE  
THE 5 GRAB BAG MINIMUM!

THIS PRICE INCLUDES FREE SHIPPING ON THE CATALOGS  
BECAUSE OF SHIPPING TERMS ALL CATALOGS SOLD IN  
MULTIPLES OF 5 FOR \$6.00 ONLY.

YOU CHOOSE EITHER MALE OR FEMALE CATALOGS  
AND IF YOU WANT NUDE OR BOP SAFE!!

## News in Brief

**Alabama:** Carbon Hill Mayor James “Pee Wee” Richardson, 61, was arrested on September 19, 2013 on multiple charges related to sexually abusing four prisoners at the city’s municipal jail; he was released eight days later after posting a \$250,000 property bond. In addition to the criminal charges, Richardson faces a civil lawsuit filed by a former prisoner who claims he took her into his office and groped her. The civil suit includes 11 counts of alleged wrongdoing by Richardson or the city, and seeks compensatory, statutory and punitive damages as well as attorney’s fees.

**Angola:** A cell phone video, which went viral on the Internet, showed several Angola prison guards kicking prisoners and beating them with sticks, then laughing as they left them bleeding and crying on the floor. Amnesty International called the incident shocking and urged the government to prosecute the guards. In a rare reaction from one of Africa’s most authoritarian governments, on September 27, 2013, Angola officials suspended 16 prison guards and firemen in connection with the brutal attack. The prison’s director was among those suspended, and the Interior Ministry said criminal charges would likely follow.

**Arizona:** A Maricopa County jail employee was murdered in his driveway by a 15-year-old boy who police said was mo-

tivated by gangs, drugs and guns. The teen, identified on September 25, 2013 as Leonard Moreno, will be tried as an adult for the random shooting of Jorge Vargas, 27. Vargas was an eight-year employee of the sheriff’s Custody Support Bureau. Moreno’s mother and a friend also were arrested, accused of trying to dispose of evidence and helping him elude police.

**Arkansas:** On September 25, 2013, a man who escaped from a California prison in 1977 was taken into custody at his home in Jessierville, Arkansas, where he had been residing under an assumed name. Michael Ray Morrow scaled a fence at the California Institute for Men in Chino some 36 years earlier and was living as Carl Frank Wilson, a church-going grandfather. New technology was able to match Morrow’s fingerprints to those of his alias from a 1984 arrest. Morrow, now 70, was extradited to California.

**Australia:** A report issued on September 26, 2013 by the Independent Commission Against Corruption recommended prosecution for a Long Bay prison guard who showed up for tower duty while high on ecstasy, sold steroids to both prisoners and fellow guards, and lied to the commission about his conduct. Robert Di-Bona worked at the Special Programmes Centre at the prison. The commission also

recommended that Di-Bona be fired.

**California:** Danne Desbrow will remember September 17, 2013 as a day with both good and bad news. First the bad: he was sentenced to 53 years to life in prison after being convicted of murder. Then the good: he got married ... by the same judge who had just sentenced him. Plus he got to eat a slice of wedding cake baked by San Diego Superior Court Judge Patricia Cookson, though there was no honeymoon. Desbrow intends to appeal his murder conviction.

**Canada:** Canada’s most notorious prison, Kingston Penitentiary, officially closed its doors on September 30, 2013 after 178 years in operation. The shutdown was a money-saving measure. The prisoners at Kingston were all transferred to other facilities and the prison will begin offering guided tours as a fundraiser for the United Way. Sometimes called Canada’s Alcatraz, Kingston Penitentiary opened in 1835, before Canada was formed as a country.

**Colorado:** On September 25, 2013, a Pitkin County jailer obtained a restraining order against a prisoner who threatened her family. Deputy Deborah Kendrick sought the order to prevent Robert Rice from contacting her, her husband – who is a Pitkin County sheriff’s deputy – and one of their family members. Kendrick said Rice had told her, “When I get out of here, I’m going to hurt your family.” The order specified that Rice could have limited contact with Kendrick while he is incarcerated at the jail.

**El Salvador:** Six Mara Salvatrucha (MS-13) gang members were hanged during a riot at a juvenile rehabilitation center in Tonacatepeque on September 24, 2013 – El Salvador’s Prisoners’ Day. Two of the dead were minors and four were adults who had been sentenced at a younger age. Police believe the murders were carefully calculated gang killings. Prisons in El Salvador are notoriously overcrowded and violent as thousands of members of the country’s notorious MS-13 and 18th Street gangs await trial or serve their sentences. The two rival gangs signed a truce in March 2012 but there is fear it may be crumbling, with gang-related murders on the rise.

**Florida:** On September 26, 2013, Boyd Wallace Higginbotham, Jr. was sentenced to life in prison for the March 2008 stabbing death of fellow prisoner Steven Pritchard in the mess hall at FCC Coleman in

**Drug Policy Alliance**, the nation’s leading organization working to end the war on drugs, is looking for cases that might be eligible for executive clemency in NYS. If you know of any cases please contact Anthony Papa at [tpapa@drugpolicy.org](mailto:tpapa@drugpolicy.org) or 212-613-8037 or write him at Drug Policy Alliance/131 West 33<sup>rd</sup> Street/15<sup>th</sup> Floor /NY, NY 10001/Attn: Clemency Cases NYS



Sumter County. A federal jury found Higginbotham guilty of first-degree murder. The men had been involved in an argument that escalated over several days until Higginbotham grabbed Pritchard around the neck and repeatedly stabbed him.

**Florida:** Tomoka Correctional Facility Major Shannon Wiggins, 44, was arrested on grand theft charges in September 2013. Wiggins, who worked part-time as a security guard at the Daytona International Speedway, was charged with stealing more than \$100,000 worth of Speedway merchandise and selling it on eBay. A friend who was helping him sell the merchandise has not yet been arrested but is under investigation. Wiggins was placed on leave by the Florida Department of Corrections.

**France:** On September 25, 2013, Sabrina Bonner, 25, and her boyfriend, prisoner Lionel Barthelemy, 31, each received 20-year sentences for raping Bonner's 4-year-old son in 2010 in the visiting area of the Toul detention center. Behind visitation room windows covered with black trash bags, as is standard practice in French prisons for privacy, Bonner blindfolded the boy, made him kneel on a chair and held him by the arms as Barthelemy raped him. Bonner then returned with her son for a second visit, knowing that he would be raped again. A lawyer representing the child said he intends to initiate legal proceedings against the prison.

**Hawaii:** Two Oahu Community Correctional Center guards, Kevin Ignacio and Ismael Castro, face trial over allegations that they beat prisoner Jeffrey Diaz bloody

in October 2012. Ignacio is accused of repeatedly punching Diaz in the head and face, while Castro was caught on surveillance video kicking him in the head. On September 17, 2013, Judge Patrick Border expressed his displeasure when the two guards failed to appear with their attorneys at a hearing to combine their criminal cases.

**Illinois:** When Cook County jail guards told prisoner Jeremiah Harris to pack up to go home on September 16, 2013, he told them to "quit playin'." Harris, 25, who had been serving a 12-year sentence as a habitual criminal and was being held at the Cook County jail for a court appearance, became the third person in 2013 to be mistakenly released. Earlier that year, prisoners Steven Robbins and Steven Derkits were erroneously released by jailers.

**Indiana:** Prisoners at the Delaware County Jail are adjusting to frosted windows in their cells, which let sunlight in but prevent unauthorized communication with the outside world. The windows have been a source of concern in the decades since the jail was built, because prisoners sometimes expose themselves or make obscene gestures to passersby on the street. Sheriff Mike Scroggins told reporters on September 3, 2013 that the "fix," a coating of paint applied to the windows, had cost around \$91.

**Kansas:** Ness County Jail escapee Benito Cardenas, Jr., 38, apologized to his victims and law enforcement officials before being sentenced in back-to-back hearings for a two-day crime spree that occurred

after he cut through four bars at the jail in August 2012. After escaping, Cardenas stole a van, burglarized a residence and accosted two women before surrendering to officers. He was sentenced on September 24, 2013 to 151 months in prison on two counts of aggravated burglary and a single count of aggravated escape, to be served consecutive to his life sentence on unrelated charges.

**Kentucky:** Prisoner Ashley Marler, four months pregnant, escaped twice in the same week. She failed to return to the Fayette County Detention Center from a medical pass on September 16, 2013, and was arrested the next day and charged with escape. On September 24, 2013, Marler was taken to the same medical clinic. She reportedly left her clothing behind, climbed into the ceiling and fled wearing only a towel and white t-shirt. She was recaptured two days later.

**Kentucky:** Former FCI Ashland guard James Lewis and Cindy Gates, the girlfriend of a prisoner at the facility, both pleaded not guilty in September 2013 to charges related to smuggling contraband into the prison. Gates' boyfriend, prisoner Gary Musick, was accused of participating in the scheme by telling Gates and Lewis what items to procure and directing other prisoners to sell the items. The contraband included marijuana, tobacco, cell phones and sexually explicit photos.

**Louisiana:** On September 19, 2013, Floyd Tillman, 26, pleaded not guilty to attempted second-degree murder after ramming the gates of the state peniten-



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription!

Quarterly drawing WINS \$100! (Void in New York)  
(Last Quarter's winner from Airway Heights, WA.)

TELL YOUR FRIENDS! ACT NOW!!



PO Box 2063 • Fort Walton Beach FL. 32549

[www.InmateMagazineService.com](http://www.InmateMagazineService.com)

## Inmate Magazine Service

## News In Brief (cont.)

tiary at Angola with his car, while guards opened fire on him. Tillman had taken his daughters, ages 8 months and 2 years, from Terrebonne Parish. He then drove to the prison and argued with guards about taking a tour. After being told many times there were no tours that day, he began ramming the gate. It is anticipated that Tillman's defense attorney will seek a mental health evaluation for his client.

**Michigan:** An attorney representing Oakland County jail guard Garry Jackson told a judge on September 16, 2013 that Jackson vehemently denied having sexual contact with a female prisoner in a broom closet while on duty at the jail. The incident was discovered after other prisoners started talking about a sexual relationship between Jackson and a 24-year-old prisoner. Although the investigation revealed that the

sex was consensual, Jackson was charged with three felony counts of criminal sexual conduct; he was released on \$10,000 personal bond and ordered not to have contact with the female prisoner.

**Myanmar:** On September 13, 2013, a riot at Nine Mile Prison in Kawthaung Township resulted in the death of one prisoner and injuries to seven others. The incident was sparked after Warden Saw Hla Chit ordered prison staff to beat and kick prisoners Ye Ko Hlaing and Htun Htun in retaliation for their participation in a fight. Officials cut the power lines to the facility in an attempt to disperse the rioters, but gunfire broke out shortly after the prison went dark. The prisoner who died, identified as Htay Nge, and the other casualties suffered gunshot wounds.

**New Jersey:** Bobby Singletary, 55, a former guard, was convicted on September 27, 2013 of smuggling heroin and marijuana into the Adult Diagnostic and Treatment

Center in Avenel, a facility for sex offenders. A prisoner who was tried with him was acquitted of all charges. Jurors heard how Singletary had prisoners pay for drugs by wiring money to outside accomplices; he was found guilty of conspiracy, official misconduct and bribery.

**New Mexico:** Former Columbus Police Chief Angelo Vega was on the payroll of the local Juarez Cartel at the same time he collected a \$40,000 annual salary for his public position, according to testimony in federal court on September 25, 2013. A witness stated that Vega received \$2,000 a month plus bonuses from the cartel for performing background and license plate checks, buying military gear and allowing cartel members to use official vehicles. Vega's wife is Assistant U.S. Attorney Paula Burnett; she has not been charged with any crime.

**New York:** As part of a September 30, 2013 plea bargain, prison guard Aaron A. Netto, 36, agreed to resign from his posi-

## PLN Classifieds

### NON NUDE FLIX CATALOG \$2 + SASE

M and M Publications PO Box 1127  
Roanoke, TX 76262

### PUZZLE BOOKS & EYE GLASSES

Brochure & Free Gifts  
Send 2 Forever Stamps or \$1.00  
Mara Worldwide  
115 W. California Blvd Ste 424-R  
Pasadena, CA 91105

### FREE & LOW COST SERVICES!

Pen Pal listing, photo copies,  
pen pal list, freak pics & more.  
We accept stamps as payment!  
No SASE needed. Mention "PLN"  
V.I.Prisoners, P.O. Box 1052,  
Allen Park, MI 48101  
Email: viprisoners@gmail.com

### Help from Beyond the Walls

New Services and Fast Turnaround  
Pictures, publications, phone  
services and more. Write today  
for free brochure. P.O. Box 185,  
Springvale, ME 04083

### The VOICES.CON Newsletter – Free

Written by lifers for lifers. For info on how  
to receive Voices.Con monthly, send  
SASE to: PO Box 361, King City, CA 93930.  
On the web at: VoicesDotCon.org;  
Email: Publisher@VoicesDotCon.org

### AMBLER DOCUMENT PROCESSING

Type, Design and Prepare  
Manuscripts for Self-Publishing  
Reasonable Rates! Accept all Genres!  
P.O. Box 938, Norwalk, CT 06852

### Free facebook & instagram setup

People searches, release shopping  
Amazon books, book editing, photo  
Duplications, flower & gift, drivers  
License & state case legal research  
Viprisonersservices@gmail.com  
P.O. Box 584609 Kissimmee FL 34749  
(863) 496-1862 for info or email

### CONNECT TO OUTSIDE WORLD!

PP provides services via internet  
Your information - social networks  
Up to 20 sites - free brochure

PRISONER PROMOTIONS  
2355 Fairview Ave #214  
Roseville, Mn 55113

### INMATESERVICES.NET – Affordable

Gifts. Mail first-class stamp to  
Archipelago 13017 Wisteria Dr.  
#310, Germantown, MD 20874 for  
catalog. Show them you care.

### Want Quality Pictures of

Quality Babes? 4x6 High Res pics  
Send self addressed stamped  
envelope for free catalog!  
PHOTO TRYST  
PO Box 103  
Chapmansboro TN 37035

### BB 5 Huge Booty DripNwet \$5.00

Buy Bad Broads 1,2,3,4 & 5 \$25  
Full Color Cats, 1000s of options  
Non-nude – Huge variety  
Send 11 stmps per cat or \$5 MO  
To: On Demand Inmate Services  
PO BOX 81 - PLN, Chelt, PA 19012  
US Female Pen pal list \$22 M/O

### IF YOU WANT THE BEST TRY EPS!

Legal Research & Forms, Internet  
& People Searches, Amazon Books,  
Erotic Photos & Stories, Pen Pals,  
Special Requests and Much More.  
Send SASE to: Elite Paralegal &  
Prisoner Services PO Box 1717,  
Appleton, WI 54912

tion at the Riverview Correctional Facility. He was charged with possessing property stolen from several construction sites. In addition to resigning, he faces up to three years' probation and will pay \$1,600 in restitution. Netto entered an Alford plea, meaning he did not admit to the allegations but pled guilty to avoid the possibility of being convicted at trial.

**Ohio:** On September 18, 2013, three Ohio Department of Youth Services guards were arraigned on charges of assaulting a teenager at the Scioto Juvenile Correctional Facility. Though details of the incident were at first sketchy, guards Laurel Jeffreys, Nathaniel Strong and Antonio Keith were identified as the suspects who allegedly beat the unnamed 15-year-old. The state's Youth Services agency was recently named in a U.S. Bureau of Justice Statistics report as among the worst in the nation for rape and sexual assaults of juvenile prisoners.

**Oklahoma:** According to court documents, Shealane Fields, a corporal who was fired from her job at the Logan County Detention Center on September 24, 2013, is accused of committing several felonies for prisoner Daniel Clark, with whom she developed a relationship. Fields allegedly smuggled contraband into the jail for Clark,

including tobacco, a lighter, a flat blade screwdriver, crazy glue and a cell phone. Investigators also found 49 love letters, including one where the couple planned a tryst in a medical cell and another where they talked about a plan for Clark to walk out of the jail.

**Oklahoma:** Tulsa County jail guard Cory Laddell Jones, 22, was arrested on September 21, 2013 on charges of bringing contraband into the facility for a \$100 payment. The arrest report said a prisoner told jail officials that Jones was paid to smuggle packages he obtained from a woman he arranged to meet at a convenience store. Jones was jailed on more than \$25,000 bond.

**Pennsylvania:** On September 17, 2013, Warden John Walton of the Westmoreland County Prison announced a new policy instituted by the facility's contract healthcare provider that requires all female prisoners to submit to pregnancy tests. The policy was created after an unidentified prisoner lied about not being pregnant and not being addicted to drugs. In order to protect the well-being of their unborn children, pregnant prisoners will receive obstetrics care and be weaned off drugs. Four percent of female prisoners at the Westmoreland County Prison were pregnant in the first

nine months of 2013.

**Pennsylvania:** During a preliminary hearing on September 27, 2013, details emerged about why a Bucks County prison guard fired two gunshots in the direction of an acquaintance, Pearson Crosby, following an early morning altercation in June 2013. Anthony Pekarski, 26, free on \$50,000 unsecured bail, was charged with simple assault, reckless endangering, disorderly conduct and possession of a weapon. He admitted firing the shots because his girlfriend, who had been sitting beside Crosby in the backseat of Pekarski's car, had an "uncomfortable look" and he wanted to scare Crosby away.

**Saudi Arabia:** On September 25, 2013, a prisoner returned after a 24-hour family visit wearing an explosive belt and threatened to detonate it, taking 200 prisoners hostage in the process. Prison officials in Madinah said the man was not mentally ill and made no demands during the six-hour standoff. According to a prison source, Saudi media reports about the incident were not accurate; the man had a gun as well as explosives. There were no reports of damage or casualties.

**South Carolina:** Tyheem Henry, convicted as the ringleader of a 2011 mob beating, was serving a 15-year sentence at

#### **MIDNIGHT EXPRESS BOOKS**

THE PREFERRED & ONLY FULL TIME  
company helping inmate authors  
publish books for 10+ years.  
PO Box 69, Dept PLN,  
Berryville, AR 72616  
Midnightexpressbooks.com  
Corrlinks: MEBooks1@yahoo.com

#### **FREE BOOK CATALOG & PRAYER CARD**

Send \$1 for S&H or  
SASE w/2 (two) US Forever Stamps  
Fiction, Nonfiction, Dictionary,  
Pastimes & Religious books  
English & Spanish.  
Jaguar Books 6881 Stanton Ave #F  
Buena Park CA 90621

#### **Education Behind Bars Newsletter**

Free electronic newsletter  
For prisoners viaCorrLinks.  
Add news@prisonlawblog.com  
to subscribe. The content  
is curated specifically  
for prisoners.

#### **SURROGATE SISTERS**

Celebrating 18+Years in Business  
No Games. We Sell Photos of Sexy  
Women, Gifts for Loved Ones,  
Erotic Stories & Pen-Pal Service  
Free Info & Flyer Send SASE to:  
Surrogate Sister - PN  
PO Box 95043, Las Vegas NV 89193

#### **Prisonerinmatefamilyservice.com**

Send a SASE for a free catalog;  
PO Box 1852 Pismo Beach, Ca 93448  
We buy stamps- 7.50 a book;  
Single stamps .25 cents; Amazon  
Orders, copies of photos/artwork  
And SO much more!  
FamilyInmateSev@aol.com

#### **LOCAL PHONE NUMBERS \$2.50/MO.**

USA anywhere 5¢/min. To MX 15¢  
Great rates all over the world!  
No signup fee, no hidden fees!  
Refer new cust, 300 free mins!  
[www.FreedomLine.net](http://www.FreedomLine.net) to sign up  
or write FreedomLine, Box 7-WCB  
C'ville IN 47331. Save BIG \$\$\$!

#### **A DEGREE/ORDINATION FROM PRISON**

Correspondence Courses via mail  
INT'L CHRISTIAN COLLEGE&SEMINARY  
PO BOX 530212 Debary, FL 32753-0212  
Associates thru PhD credit for  
Life Experience \*ACCREDITED\*  
Tuition as Low as \$19.95 a month  
Send SASE for a Free Evaluation

#### **Celebrity Photos For Sale:**

Send self addressed stamped  
envelope for lists. Name stars  
you would like to order photos of.  
Start your collection today!  
Photoworld-PLN  
PO Box 401016  
Las Vegas, Nv. 89140

#### **#1 PHOTO FORWARDING SERVICE**

\*\*SPECIAL \*\* \$25.00 for 60 Photos!  
Email & Text your photos 2 us  
We Print & Mail them 2 YOU!  
infolincs.us (4 more info)  
Email: infolincs@centurylink.net  
Check/\$\$ Order: InfoLINC'S, LLC  
PO Box 644, Shady Cove, OR 97539

the Lee Correctional Institute. On September 8, 2013, the website Charleston Thug Life published Facebook postings Henry had made using a contraband cell phone, prompting a shakedown at the prison. Henry was charged with disciplinary violations, placed in segregation and lost good time credits and canteen, telephone and visitation privileges.

**South Dakota:** Robert Corsini was serving a seven-day jail term with work release after being caught in two separate online prostitution stings. In court on September 10, 2013, a judge found it “implausible” that Corsini had invited yet another prostitute he found online to meet him at his home while he was on work release. Judge John Schlinggen sentenced Corsini to 90 more days in jail – this time without the option of work release.

**Tennessee:** Hawkins County jail guard

Scott Winkle “laid hands” on a prisoner while walking him back to a cell following a disturbance. Although the physical contact did not rise to the level of assault and no criminal charges were filed, Winkle was fired on September 19, 2013 for violating county regulations. He had recently attended a training session on appropriate physical contact in response to a February 2013 staff-on-prisoner assault incident. In that case, jailer Roy Junior Mathes was charged with misdemeanor assault. ■

## Criminal Justice Resources

### **ACLU National Prison Project**

Handles state and federal conditions of confinement claims affecting large numbers of prisoners. Publishes the *NPP Journal* (available online) and the *Prisoners' Assistance Directory* (write for more information). Contact: ACLU NPP, 915 15th Street NW, 7th Fl., Washington, DC 20005 (202) 393-4930. [www.aclu.org/prisoners-rights/aclunational-prison-project](http://www.aclu.org/prisoners-rights/aclunational-prison-project)

### **Amnesty International**

Compiles information about prisoner torture, beatings, rape, etc. to include in reports about U.S. prison conditions; also works on death penalty issues. Contact: Amnesty International, 5 Penn Plaza, New York NY 10001 (212) 807-8400. [www.amnestyusa.org](http://www.amnestyusa.org)

### **Center for Health Justice**

Formerly CorrectHELP. Provides information related to HIV in prison – contact them if you are not receiving proper HIV medication or are denied access to programs due to your HIV status. Contact: CHJ, 900 Avila Street, Suite 301, Los Angeles, CA 90012 (213) 229-0985; HIV Hotline: (213) 229-0979 (collect calls from prisoners OK). [www.centerforhealthjustice.org](http://www.centerforhealthjustice.org)

### **Centurion Ministries**

Works to exonerate the wrongfully convicted, in both cases involving DNA evidence and those that do not. Centurion only takes 1-2 new cases a year involving actual innocence. They do not consider accidental death or self-defense murder cases, he said/she said rape cases, or child abuse or child sex abuse cases unless there is physical evidence. All case inquiries must be from the prisoner involved, in writing. Contact: Centurion Ministries, 1000 Herrontown Road, Princeton, NJ 08540 (609) 921-0334. [www.centurionministries.org](http://www.centurionministries.org)

### **Critical Resistance**

Seeks to build an international movement to abolish the Prison Industrial Complex, with offices in Florida, California, New York, Texas and Louisiana. Publishes *The Abolitionist* newsletter. Contact: Critical Resistance, 1904 Franklin Street #504, Oakland, CA 94612 (510) 444-0484. [www.criticalresistance.org](http://www.criticalresistance.org)

### **The Exoneration Project**

The Exoneration Project is a non-profit organization dedicated to working to free prisoners who were wrongfully convicted. The Project represents innocent individuals in post-conviction legal proceedings; typical cases involve DNA testing, coerced confessions, police misconduct, the use of faulty evidence, junk science, faulty eyewitness testimony and ineffective assistance of counsel claims. Contact: The Exoneration Project, 312 North May Street, Suite 100, Chicago, Illinois 60607 (312) 789-4955. [www.exonerationproject.org](http://www.exonerationproject.org)

### **Family & Corrections Network**

Primarily provides online resources for families of prisoners related to parenting, children of prisoners, prison visitation, mothers and fathers in prison, etc. Contact: F&CN, 93 Old York Road, Suite 1 #510, Jenkintown, PA 19046 (215) 576-1110. [www.fcnetwork.org](http://www.fcnetwork.org)

### **FAMM**

FAMM (Families Against Mandatory Minimums) advocates against mandatory minimum sentencing laws with an emphasis on federal laws, and works to “shift resources from excessive incarceration to law enforcement and other programs proven to reduce crime and recidivism.” Contact: FAMM, 1100 H Street, NW #1000, Washington, DC 20005 (202) 822-6700. [www.famm.org](http://www.famm.org)

### **The Fortune Society**

Provides post-release services and programs for prisoners in the New York City area and occasionally publishes *Fortune News*, a free publication for prisoners that deals with criminal justice issues, primarily in New York. Contact: The Fortune Society, 29-76 Northern Blvd., Long Island City, NY 11101 (212) 691-7554. [www.fortunesociety.org](http://www.fortunesociety.org)

### **Innocence Project**

Provides advocacy for wrongfully convicted prisoners whose cases involve DNA evidence and are at the post-conviction appeal stage. Maintains an online list of state-by-state innocence projects. Contact: Innocence Project, 40 Worth St., Suite 701, New York, NY 10013 (212) 364-5340. [www.innocenceproject.org](http://www.innocenceproject.org)

### **Just Detention International**

Formerly Stop Prisoner Rape, JDI seeks to end sexual violence against prisoners. Provides resources for imprisoned and released rape survivors and activists for almost every state. Contact: JDI, 3325 Wilshire Blvd. #340, Los Angeles, CA 90010 (213) 384-1400. [www.justdetention.org](http://www.justdetention.org)

### **Justice Denied**

Although no longer publishing a print magazine, Justice Denied continues to provide the most comprehensive coverage of wrongful convictions and how and why they occur. Their content is available online, which includes all back issues of the Justice Denied magazine and a database of more than 4,500 wrongfully convicted people. Contact: Justice Denied, P.O. Box 68911, Seattle, WA 98168 (206) 335-4254. [www.justicedenied.org](http://www.justicedenied.org)

### **National CURE**

Citizens United for Rehabilitation of Errants (CURE) is a national organization with state and special interest chapters (such as federal prisoners and sex offenders) that advocates for rehabilitative opportunities for prisoners and less reliance on incarceration. Publishes the *CURE Newsletter*, \$2 annual membership for prisoners. Contact: CURE, P.O. Box 2310, Washington, DC 20013-2310 (202) 789-2126. [www.curenational.org](http://www.curenational.org)

### **November Coalition**

Advocates against the war on drugs and previously published the *Razor Wire*, a bi-annual newsletter on drug war-related issues, releasing drug war prisoners and restoring civil rights. No longer regularly published, back issues are available online. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 684-1550. [www.november.org](http://www.november.org)

### **Prison Activist Resource Center**

PARC is a prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, able-ism, heterosexism and classism, specifically within the Prison Industrial Complex. PARC produces a free resource directory for prisoners. Contact: PARC, P.O. Box 70447, Oakland, CA 94612 (510) 893-4648. [www.prisonactivist.org](http://www.prisonactivist.org)



# Prison Legal News Book Store

Fill in the boxes next to each book you want to order, indicating the quantity and price. Enter the Total on the Order Form on the next page.  
**FREE SHIPPING on all book / index orders OVER \$50 (effective 3-1-2014 until further notice). \$6.00 S/H applies to all other book orders.**

## SUBSCRIBE TO PLN FOR 4 YEARS AND CHOOSE ONE BONUS!

1. SIX (6) FREE ISSUES FOR 54 TOTAL! OR
2. PRISON PROFITEERS (A \$24.95 VALUE!) OR
3. THE HABEAS CITEBOOK (A \$49.95 VALUE!)

**Prison Profiteers**, edited by Paul Wright and Tara Herivel, 323 pages. \$24.95. This is the third book in a series of Prison Legal News anthologies that examines the reality of mass imprisonment in America. *Prison Profiteers* is unique from other books because it exposes and discusses who profits and benefits from mass imprisonment, rather than who is harmed by it and how. 1063 ☐

**The Habeas Citebook: Ineffective Assistance of Counsel**, by Brandon Sample, PLN Publishing, 200 pages. \$49.95. This is PLN's second published book, written by federal prisoner Brandon Sample, which covers ineffective assistance of counsel issues in federal habeas petitions. Includes hundreds of case citations! 1078 ☐

**Prison Nation: The Warehousing of America's Poor**, edited by Tara Herivel and Paul Wright, 332 pages. \$35.95. PLN's second anthology exposes the dark side of the 'lock-em-up' political agenda and legal climate in the U.S. 1041 ☐

**The Ceiling of America, An Inside Look at the U.S. Prison Industry**, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. \$22.95. PLN's first anthology presents a detailed "inside" look at the workings of the American justice system. 1001 ☐

**Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada**, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, PLN Publishing, 221 pages. \$49.95. Written by Missouri prisoner Jon Marc Taylor, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, para-legal and college courses by mail. 1071 ☐

**The Criminal Law Handbook: Know Your Rights, Survive the System**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 608 pages. \$39.99. Explains what happens in a criminal case from being arrested to sentencing, and what your rights are at each stage of the process. Uses an easy to understand question-and-answer format. 1038 ☐

**Represent Yourself in Court: How to Prepare & Try a Winning Case**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 528 pages. \$39.99. Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. The authors explain what to say in court, how to say it, etc. 1037 ☐

**Law Dictionary**, Random House Webster's, 525 pages. \$19.95. Comprehensive up-to-date law dictionary explains more than 8,500 legal terms. Covers civil, criminal, commercial and international law. 1036 ☐

**The Blue Book of Grammar and Punctuation**, by Jane Straus, 110 pages. \$14.95. A guide to grammar and punctuation by an educator with experience teaching English to prisoners. 1046 ☐

**Legal Research: How to Find and Understand the Law**, by Stephen Elias and Susan Levinkind, 568 pages. \$49.99. Comprehensive and easy to understand guide on researching the law. Explains case law, statutes and digests, etc. Includes practice exercises. 1059 ☐

**Deposition Handbook**, by Paul Bergman and Albert Moore, Nolo Press, 352 pages. \$34.99. How-to handbook for anyone who conducts a deposition or is going to be deposed. 1054 ☐

**Criminal Law in a Nutshell**, by Arnold H. Loewy, 5th edition, 387 pages. \$43.95. Provides an overview of criminal law, including punishment, specific crimes, defenses & burden of proof. 1086 ☐

## SUBSCRIBE TO PLN FOR 3 YEARS AND CHOOSE ONE BONUS!

1. FOUR (4) FREE ISSUES FOR 40 TOTAL! OR
2. PROTECTING YOUR HEALTH AND SAFETY (A \$10.00 VALUE!)

**Protecting Your Health and Safety**, by Robert E. Toone, Southern Poverty Law Center, 325 pages. \$10.00. This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how to enforce your rights, including through litigation. 1060 ☐

**Spanish-English/English-Spanish Dictionary**, 2nd ed. Random House. \$15.95. Spanish-English and English-Spanish. 60,000+ entries from A to Z; includes Western Hemisphere usage. 1034a ☐

**Writing to Win: The Legal Writer**, by Steven D. Stark, Broadway Books/Random House, 283 pages. \$19.95. Explains the writing of effective complaints, responses, briefs, motions and other legal papers. 1035 ☐

**Actual Innocence: When Justice Goes Wrong and How to Make it Right**, updated paperback ed., by Barry Scheck, Peter Neufeld and Jim Dwyer, 403 pages. \$16.00. Describes how criminal defendants are wrongly convicted. Explains DNA testing and how it works to free the innocent. Devastating critique of police and prosecutorial misconduct. 1030 ☐

**Webster's English Dictionary**, Newly revised and updated, Random House. \$8.95. 75,000+ entries. Includes tips on writing and word usage, and has updated geographical and biographical entries. Includes recent business and computer terms. 1033 ☐

**Everyday Letters for Busy People**, by Debra Hart May, 287 pages. \$18.99. Hundreds of sample letters that can be adapted for most any purpose, including letters to government agencies and officials. Has numerous tips for writing effective letters. 1048 ☐

**Roget's Thesaurus**, 717 pages. \$8.95. Helps you find the right word for what you want to say. 11,000 words listed alphabetically with over 200,000 synonyms and antonyms. Sample sentences and parts of speech shown for every main word. Covers all levels of vocabulary and identifies informal and slang words. 1045 ☐

**Beyond Bars, Rejoining Society After Prison**, by Jeffrey Ian Ross, Ph.D. and Stephen C. Richards, Ph.D., Alpha, 240 pages. \$14.95. *Beyond Bars* is a practical and comprehensive guide for ex-convicts and their families for managing successful re-entry into the community, and includes information about budgets, job searches, family issues, preparing for release while still incarcerated, and more. 1080 ☐

**Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A.**, by Mumia Abu Jamal, City Lights Publishers, 280 pages. \$16.95. In *Jailhouse Lawyers*, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned-advocates who have learned to use the court system to represent other prisoners. 1073 ☐

**With Liberty for Some: 500 Years of Imprisonment in America**, by Scott Christianson, Northeastern University Press, 372 pages. \$18.95. The best overall history of the U.S. prison system from 1492 through the 20th century. A must-read for understanding how little things have changed in U.S. prisons over hundreds of years. 1026 ☐

**Complete GED Preparation**, by Steck-Vaughn, 922 pages. \$24.99. This useful handbook contains over 2,000 GED-style questions to thoroughly prepare students for taking the GED test. It offers complete coverage of the revised GED test with new testing information, instructions and a practice test. 1099 ☐

**\* ALL BOOKS SOLD BY PLN ARE SOFTCOVER / PAPERBACK \***

**Hepatitis and Liver Disease: What You Need to Know**, by Melissa Palmer, MD, 457 pages. **\$17.95.** Describes symptoms & treatments of hepatitis B & C and other liver diseases. Includes medications to avoid, what diet to follow and exercises to perform, plus a bibliography. 1031 ☐

**Arrested: What to Do When Your Loved One's in Jail**, by Wes Denham, 240 pages. **\$16.95.** Whether a defendant is charged with misdemeanor disorderly conduct or first-degree murder, this is an indispensable guide for those who want to support family members, partners or friends facing criminal charges. 1084 ☐

**Prisoners' Self-Help Litigation Manual**, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 960 pages. **\$39.95.** The premiere, must-have "Bible" of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Highly recommended! 1077 ☐

**How to Win Your Personal Injury Claim**, by Atty. Joseph Matthews, 7th edition, NOLO Press, 304 pages. **\$34.99.** While not specifically for prison-related personal injury cases, this book provides comprehensive information on how to handle personal injury and property damage claims arising from accidents. 1075 ☐

**Sue the Doctor and Win! Victim's Guide to Secrets of Malpractice Lawsuits**, by Lewis Laska, 336 pages. **\$39.95.** Written for victims of medical malpractice/neglect, to prepare for litigation. Note that this book addresses medical malpractice claims and issues in general, not specifically related to prisoners. 1079 ☐

**Advanced Criminal Procedure in a Nutshell**, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **\$43.95.** This text is designed for supplemental reading in an advanced criminal procedure course on the post-investigation processing of a criminal case, including prosecution and adjudication. 1090 ☐

**Our Bodies, Ourselves**, by The Boston Women's Health Book Collective, 944 pages. **\$26.00.** This book about women's health and sexuality has been called "America's best-selling book on all aspects of women's health," and is a great resource for women of all ages. 1082 ☐

**Arrest-Proof Yourself**, by Dale Carson and Wes Denham, 288 pages. **\$14.95.** This essential "how not to" guide written by an ex-cop explains how to act and what to say when confronted by the police to minimize the chances of being arrested and avoid additional charges. Includes information on basic tricks that police use to get people to incriminate themselves. 1083 ☐

**Nolo's Plain-English Law Dictionary**, by Gerald N. Hill and Kathleen T. Hill, 496 pages. **\$29.99.** Find terms you can use to understand and access the law. Contains 3,800 easy-to-read definitions for common (and not so common) legal terms. 3001 ☐

**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFave, 7th edition, 603 pages. **\$43.95.** Intended for use by law students, this is a succinct analysis of constitutional standards of major significance in the area of criminal procedure. 1085 ☐

**A Dictionary of Criminal Law Terms** (Black's Law Dictionary® Series), by Bryan A. Garner, 768 pages. **\$33.95.** This handbook contains police terms such as preventive detention and protective sweep, and phrases from judicial-created law such as independent-source rule and open-fields doctrine. A good resource to help navigate your way through the maze of legal language in criminal cases. 1088 ☐

**PLN Cumulative Index. \$22.50 each.** PLN Article Indexes provide detailed information about all PLN articles, including title, author, issue, page number, topics covered, citations, and if it is state, BOP or jail specific. Can be searched on over 500 subjects such as medical neglect or sexual assault. Circle the index(es) you are ordering: **1990-1995, 1996-1998, 1999-2001, 2002-2004** (more recent indexes not yet available) ☐

#### Subscription Rates

	1 year	2 years	3 years	4 years
<b>Prisoners</b>	<b>\$30</b>	<b>\$ 60</b>	<b>\$ 90</b>	<b>\$120</b>
<b>Individuals</b>	<b>\$35</b>	<b>\$ 70</b>	<b>\$105</b>	<b>\$140</b>
<b>Professionals</b>	<b>\$90</b>	<b>\$180</b>	<b>\$270</b>	<b>\$360</b>

(Attorneys, agencies, libraries)

#### Subscription Bonuses

- 2 years** - 2 bonus issues for 26 total issues  
**3 years** - 4 bonus issues (40 total) or a bonus book as listed on pg. 61  
**4 years** - 6 bonus issues (54 total) or a bonus book as listed on pg. 61

(All subscription rates and bonus offers are valid as of 3-1-2014)



Purchase with Visa, MasterCard, AmEx or Discover by phone: **561-360-2523**

Or buy books and subscriptions online: **www.prisonlegalnews.org**



#### Mail Payment and Order to:

Prison Legal News  
P.O. Box 1151  
Lake Worth, FL 33460

**All purchases must be pre-paid. Prisoners can pay with new first-class stamps (strips or books only, no loose stamps) or pre-stamped envelopes, if allowed by institutional policies.**

Please **Change my Address** to what is entered below ☐

#### **Mail Order To:**

Name: \_\_\_\_\_

DOC #: \_\_\_\_\_

Suite/Cell: \_\_\_\_\_

Agency/Inst: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

#### **Subscribe to Prison Legal News**

**\$ Amount**

6 month subscription (prisoners only) - \$18 \_\_\_\_\_

1 yr subscription (12 issues) \_\_\_\_\_

2 yr subscription (2 bonus issues for 26 total!) \_\_\_\_\_

3 yr sub (*write below which FREE book you want*) \_\_\_\_\_

or 4 bonus issues for 40 issues total!

4 yr sub (*write below which FREE book you want*) \_\_\_\_\_

or 6 bonus issues for 54 issues total!

Random sample issue of PLN - \$3.50 each \_\_\_\_\_

#### **Books or Index Orders** (No S/H charge on

3 & 4-year sub free books OR book orders OVER \$50!) **Qty.**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Add \$6.00 S/H to Book Orders UNDER \$50** \_\_\_\_\_

**FL residents ONLY add 6% to Total Book Cost** \_\_\_\_\_

**Total Amount Enclosed:** \_\_\_\_\_

**\* No refunds on PLN subscription or book / index orders after orders have been placed \***

# 3RD STRIKE? WRONGLY CONVICTED? TERRORS?

ATTENTION!! CA 3<sup>RD</sup> STRIKERS DON'T BE LEFT OUT OR WAIT FOR THE SYSTEM. WE CAN HELP!

## INMATE LEGAL HELP 411 FREEDOM ANGELS

Brian P - "They helped me remove 4 life sentences

"Big" D McGwen - Back into Court.. And SET FREE

Tyron S. - 38 years deducted.. FREE NOW!

### PERSONALIZED & REASONABLY PRICED

#### ADVANCED LEGAL SERVICES

#### SUCCESSFUL WINNING STRATEGIES EVEN YOUR ODDS



We find the MISSING facts & information that were never considered or heard in your case originally.

OUR GOAL= Evidentiary Hearing for YOU!

MAKE FREEDOM A PRIORITY?

HAVE FAMILY / FRIENDS CALL NOW

PLANHELP@411FreedomANGELS.com

HABEAS Booklet ~ \$20 PayPal or Stamps

www.411FreedomANGELS.com



*You are in our thoughts and prayers*

### WRITS~MOTIONS~BRIEFS

3<sup>RD</sup> STRIKERS GO to TOP of the List

- Post Conviction Relief Assistance
- Writ Of Habeas Corpus-State / Federal
- Sentence Modifications
- Pre-Post Parole Board
- In House Legal Investigators
- Resolve Warrants on pending cases
- MANY Other Legal Services



AGGRESSIVE REPRESENTATION to PROTECT YOUR RIGHTS

JACKSON & ASSOCIATES LAW CENTERS

402 W. Broadway POB 81609 San Diego, CA 92138

24/7 call NOW! 1\*855\*411\*ANGELS (2643)

## Great Self-Help Book Deals From Prison Legal News!



### How to Win Your Personal Injury Claim

\$34.99

*How to Win Your Personal Injury Claim* shows you how to handle almost every accident situation, and guides you through the insurance claim process, step by step. Learn how to:

- protect your rights after an accident
- determine what your claim is worth
- handle a property-damage claim
- deal with uncooperative doctors, lawyers and insurance companies
- counter the special tactics insurance companies use
- prepare a claim for compensation
- negotiate a full and fair settlement
- stay on top of your case if you hire a lawyer

#### Order from Prison Legal News

Add \$6 shipping for orders under \$50

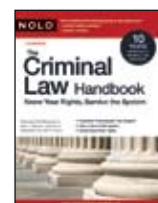
Prison Legal News

PO Box 1151

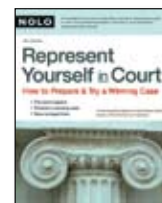
Lake Worth, FL 33460

Phone: 561-360-2523

www.prisonlegalnews.org



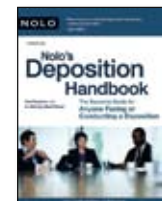
The Criminal Law Handbook  
\$39.99



Represent Yourself in Court  
\$39.99



Legal Research  
\$49.99



Nolo's Deposition Handbook  
\$34.99

NOLO  
YOUR LEGAL COMPANION





## Prison Legal News

PO Box 1151  
Lake Worth FL 33460

Change Service Requested

Non-Profit Org.  
U.S. Postage  
PAID  
Portland OR  
Permit No. 3142

### Subscription Renewal

Subscriptions expire after the issue shown on the label is mailed. For example, if the label says: EXPIRES 02/2015, then the subscription expires after the February 2015 issue is mailed. Please renew at least 2 months before the expiration date. IF THE LABEL SAYS **EXPIRES: 04/2014** THIS IS YOUR LAST ISSUE. Please renew immediately to avoid missing any issues.

### Change of Address

If you move or are transferred, please notify PLN as soon as possible so your issues can be mailed to your new address! PLN only accepts responsibility for sending an issue to the address provided at the time an issue is mailed!



# PRISONLEGALNEWS.org

**Dedicated to Protecting Human Rights**

>>FREE Data Search |

Decisions

Investigations

Audits

Publications

Cases

Verdicts

Settlements

**If you need to know about prisons and jails or are litigating a detention facility case, you can't afford not to subscribe to our website!**

**Online subscribers get unlimited, 24-hour a day access to the website and its content!**

 **Sign up for PLN's FREE listserv to receive prison and jail news and court rulings by e-mail.**

- ▶ PLN's website offers all issues of PLN in both searchable database and PDF formats. Issues are indexed and posted as soon as they go to press.
- ▶ Publications section has numerous downloadable government reports, audits and investigations from around the country.
- ▶ Full text decisions of thousands of court cases, published and unpublished.
- ▶ All content is easy to print for downloading and mailing to prisoners.
- ▶ Most complete collection of prison and jail related verdicts and settlements anywhere.
- ▶ Order books, print subscriptions and make donations on line.

- ▶ Brief bank with a wide assortment of winning motions, briefs, complaints and settlements.
- ▶ Links to thousands of prison, jail, criminal justice and legal websites around the world.
- ▶ Thousands of articles and cases, all fully indexed by more than 500 subjects, searchable by case name, case year, state of origin, court, author, location, case outcome, PLN issue and key word search.
- ▶ Search free, pay only if you find it!
- ▶ The highest quality, most comprehensive prison litigation news and research site in the world.

**Affordable rates to meet your budget  
\$19.95 per month • \$149.95 per year**

**Subscribe to Prison Legal News Online! <http://www.prisonlegalnews.org>**





# Prison Legal News

VOL. 25 No. 5  
ISSN 1075-7678

*Dedicated to Protecting Human Rights*

May 2014

## A Home of Their Own

by Lisa Riordan Seville and Graham Kates

**R**ECOVERY IS WORK THAT TERRANCE Streeter knows.

At 56, he is clean. No more drinking, no more drugs. After graduating from an alcohol recovery program two years ago, he went looking for a home. In New York City, his \$855 monthly disability check doesn't go far.

Despite the distance he traveled from addiction, Streeter in late 2012 found himself homeless and suicidal.

He checked himself into the psychiatric ward of a city hospital, where a social worker eventually found him somewhere she said was safe and drug-free: a residence run by a substance abuse treatment program called Narco Freedom.

When he walked through the door of that home, a rundown former hotel on

Beach 116 Street, in the Rockaway neighborhood of Queens, Streeter was shocked.

Cockroaches skittered across the floor. The plumbing was bad, the bathroom moldy.

"Are you kidding me?" he remembers saying to himself. "This is recovery?"

Streeter had entered the largely unregulated system of group homes that has emerged in cities throughout the country, often catering to poor people struggling with substance abuse, homelessness, or returning from prison.

In New York City, where the demand for affordable housing is especially high, these houses have become a little discussed, but deeply ingrained, piece of the recovery and reentry landscape.

Unlike government-sanctioned halfway houses, these homes don't operate treatment programs on-site, but they do often require residents to attend outpatient therapy.

The New York City facilities, variously known as "three-quarter houses," "sober homes" and "transitional housing," bring in millions of dollars each year in taxpayer funds for landlords and operators, largely through welfare, Medicaid and disability payments.

Yet no city or state agency licenses or oversees the homes, creating a system in which some houses institute rules that advocates say violate tenant laws and patient rights.

Housing and tenants' advocates estimate there are more than 300 of these buildings in New York alone. Most are located in the city's poorest neighborhoods, and many have been slapped with violations of city codes.

### Road to Recovery

FROM LOS ANGELES TO LONG ISLAND, NEW York, "sober homes" have emerged as part of the road to recovery.

Well-run homes can be a positive step for those trying to turn their lives around, according to Dr. Leonard A. Jason, director of the Center for Community Research at DePaul University.

Jason says he has visited many homes that live up to their stated goals, helping residents develop a sense of responsibility and giving them the skills and confidence to pursue productive lives.

"If it's a really well-run sober living home, that house could be a place of real health," says Jason, who recently put out a policy statement aimed at helping to develop research and best practices.

"It can be done right, but it can just as easily be done very wrong."

And when it has gone wrong, authorities have raised doubts about the entire industry.

A spike of private sober homes in Los Angeles, where residents may pay \$500 each month for a bed, has prompted the city to propose an ordinance to shut them down.

Long Island and suburban Boston have also had a slew of complaints and safety issues.

In Massachusetts, problems extended to relationships between the homes and medical providers. In 2007 and 2010, the Massachusetts Attorney General accused two medical labs of engaging in kickback schemes, receiving referrals from sober homes with which the labs had a financial relationship.

After more than \$20 million in settlements and restitution, the state proposed legislation to stop the practice.

In New York City, people arrive at the homes from hospitals, social service agencies, prison, the street and by word of mouth.

Advocates claim that some of the estimated 300 houses are simply boarding

## INSIDE

From the Editor	10
Kosher Meals in Florida DOC	14
Financial Management Book Review	18
Former CO DOC Official Sentenced	23
Pay Tel Receives FCC Waiver	26
Research on Conjugal Visits	28
Prison Education Programs	34
Sentencing for Juvenile Lifers	38
Reports on Elderly Prisoners	40
Lawsuit Against Missouri Jail	44
BOP Population Increasing	48
MA Officials Disciplined	53
News in Brief	56



## **DON'T LET THE TIME DO YOU. STAY CONNECTED!**

**Guaranteed savings of up to 90%** on your long distance, out-of-state, and international calls from Federal prisons, county jails and State prisons.

### **Best Rates and Plans**

Multi-number Friends & Family Package for as little as \$10.00/month

More plans & more numbers than any operator -

### **No Hidden Fees**

**What We Say Is What You Pay** – NO additional “fees”, “charges” or “surcharges”

International calls are billed only on call acceptance. No bogus rounding

### **No Contracts, No Penalties, No Hassles**

No long term commitments – Service is always month – to – month. Cancel at anytime with NO penalties and NO cancellation fees with just a phone call or an e-mail.

### **Fast and EZ Setup**

We **ALWAYS** have numbers and can set up instantaneously online or on the phone.

## **Special Commitment, Civil Detention & Halfway House**

\$0.40 connection charge from payphones  
lowest in the business

Voice Mail and Call Recording options

Call, write, e-mail or have your loved ones check out our website for more information.

SP Telecom  
1220 Broadway - # 801-A  
New York, NY 10001  
[www.inmatefone.com](http://www.inmatefone.com)  
e-mail: [clients@inmatefone.com](mailto:clients@inmatefone.com)  
Español: [soporte@inmatefone.com](mailto:soporte@inmatefone.com)  
Call: 1(845)326-5300 (Collect calls are NOT accepted)  
Español: 1(845)342-8110 (Llamadas por cobrar no se aceptan)

Some restrictions apply. Plan availability depends on the Institution

## **NO PERMITA QUE EL TIEMPO LE SEPRE DE SU FAMILIA!**

**Garantizamos ahorros de hasta el 90%** en sus llamadas de larga distancia, entre estados, y en las llamadas internacionales desde prisiones federales, estatales y locales.

### **Los mejores Planes y Tarifas**

Plan para familias y amigos con varios numeros por tan solo \$10.00/ mes .

Mas planes y numeros que ningun otro operador .

### **No hay letra pequeña**

**Lo Que Ves Es Lo Que Pagas**, NO hay ningun otro cargo extra.

Las llamadas internacionales solo se facturan cuando es aceptada por el familiar al otro lado del hilo telefonico.

**No hay contrato , permanencia ni ningun tipo de travas .**

El servicio siempre se ofrece en base a un mes de duracion pudiendo renovar el mismo todo los meses sin ningun cargo por la terminacion del servicio y lo puede solicitar con una simple llamada de telefono o con un correo electronico (E-MAIL)

**La solicitud se puede hacer rapida y muy facil .**

Nosotros siempre tenemos numeros y podemos procesar to registro inmediatamente en lines o por telefono.

**Detenidos civiles en carceles especiales y reclusos en camino a casas de medio camino le ofrecemos los siguientes servicios.**

\$0.40 de recarfo desde telefonos de prepago, la tarifa mas baja en el sector .

Buzon de Voz y la posibilidad de grabar las llamadas .



## Prison Legal News

a publication of the  
Human Rights Defense Center  
[www.humanrightsdefensecenter.org](http://www.humanrightsdefensecenter.org)

### EDITOR

Paul Wright

### MANAGING EDITOR

Alex Friedmann

### COLUMNISTS

Michael Cohen, Kent Russell,

Mumia Abu Jamal

### CONTRIBUTING WRITERS

Matthew Clarke, John Dannenberg,

Derek Gilna, Gary Hunter,

David Reutter, Mark Wilson,

Joe Watson, Christopher Zoukis

### RESEARCH ASSOCIATE

Mari Garcia

### ADVERTISING DIRECTOR

Susan Schwartzkopf

### LAYOUT

Lansing Scott

### HRDC LITIGATION PROJECT

Lance Weber—General Counsel

Robert Jack—Staff Attorney

Sabarish Neelakanta—Staff Attorney

### PLN is a monthly publication.

A one year subscription is \$30 for prisoners, \$35 for individuals, and \$90 for lawyers and institutions. Prisoner donations of less than \$30 will be pro-rated at \$3.00/issue. Do not send less than \$18.00 at a time. All foreign subscriptions are \$100 sent via airmail. PLN accepts Visa and Mastercard orders by phone. New subscribers please allow four to six weeks for the delivery of your first issue. Confirmation of receipt of donations cannot be made without an SASE. PLN is a section 501 (c)(3) non-profit organization. Donations are tax deductible. Send contributions to:

Prison Legal News

PO Box 1151

Lake Worth, FL 33460

561-360-2523

[info@prisonlegalnews.org](mailto:info@prisonlegalnews.org)

[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

PLN reports on legal cases and news stories related to prisoner rights and prison conditions of confinement. PLN welcomes all news clippings, legal summaries and leads on people to contact related to those issues.

Article submissions should be sent to - The Editor - at the above address. We cannot return submissions without an SASE. Check our website or send an SASE for writer guidelines.

Advertising offers are void where prohibited by law and constitutional detention facility rules.

PLN is indexed by the *Alternative Press Index*, *Criminal Justice Periodicals Index* and the *Department of Justice Index*.

## A Home of Their Own (cont.)

houses, stuffed with bunks leased to poor individuals.

Others offer those with few options a hard-to-refuse tradeoff: a bed, in return for a commitment to attend a treatment program associated with the house. While the system serves women, most residents are men.

Some residents kick their habits and move on with their lives. Their beds are quickly filled.

Half a dozen people interviewed by *The Crime Report* said they attended treatment they did not need in order to have a place to sleep.

"It is very hard to get housing if you do not have a substance abuse problem," said Debbie Boar, Deputy Director of Reentry Initiatives at Harlem Community Justice Center, which works with people returning from prison. "Besides the shelter system, if you don't say you have a drug problem, there's no housing."

### Falling Through the Cracks

TERRANCE STREETER HAD GRADUATED from an addiction program in 2011, and stayed clean, but he knew that agreeing to go back to treatment meant a bed to sleep in.

"I ended up at Narco Freedom because I fell through the cracks," said Streeter. "I didn't need treatment for drugs. I needed a home. I didn't want to be on the streets."

In 2010, city homeless advocates successfully petitioned the city to stop referring homeless people to pay-by-the-bunk homes with a history of building complaints.

Advocates have also raised questions about the programs tied to sober homes.

It is not illegal for a certified substance abuse treatment provider to also operate uncertified housing, according to a spokesperson with the state Office of Alcohol and Substance Abuse Services (OASAS), which certifies drug programs.

But the agency has raised concerns about relationships between the two.

In a 2011 letter to the executive director of CIS Counseling Services, a now-closed substance abuse clinic that also ran sober homes, an OASAS administrator questioned whether rules at the homes constituted "coercion and undue influence."

"Patients reported the practice of mandatory outpatient treatment as a re-

quirement for admission into a sober home residence," wrote Charles Monson, OASAS associate commissioner for the Division of Quality Assurance and Performance Improvement.

"This practice violates Patient Rights regulations," the letter said, adding it "should be immediately ceased."

CIS Counseling shuttered soon after, but others appear to use a similar model.

The Rockaway building, for example, is part of a network of houses associated with Narco Freedom, a non-profit founded in the 1970s, which is now one of the largest treatment programs in the city.

Property records and interviews with tenants and employees confirm that the organization operates at least twenty homes.

Interviews by *The Crime Report* with more than two dozen residents, treatment advocates and employees of Narco Freedom houses, as well as a review of hundreds of public records and agency documents, showed how real estate developers partnered with Narco Freedom to turn dilapidated buildings into a sober home network using a similar model as CIS Counseling. (Narco Freedom did not respond to *The Crime Report's* repeated requests for interviews).

### Rent of \$215 a Month

IT WORKS LIKE THIS: A LANDLORD LEASES the building to an outpatient drug treatment program, which offers its clients a bed for the tenure of their treatment. The client typically pays rent of \$215 a month through a welfare shelter subsidy from the city's Human Resources Administration (HRA).

In turn, the treatment programs, generally funded almost entirely by Medicaid, a public health care program for the poor, pay the landlords a monthly rent, generally much higher than what landlords would make by collecting \$215 a month per tenant.

In New York, Medicaid generally pays about \$70 for each group session that its beneficiaries attend, sometimes up to five times per week.

Residents said missed sessions must be made up on weekends, a mandate echoed in signs posted in one Narco Freedom house *The Crime Report* visited. Those who miss too many sessions, or who exhaust their treatment funding, are "discharged," or evicted.

## A Home of Their Own (cont.)

Ann Jacobs, director of the Prisoner Reentry Institute at the John Jay College of Criminal Justice, has been studying the role that these houses play in New York City's post-incarceration system. The housing has become essential for those returning from prison and in need of a bed, Jacobs said.

But she questioned the strings attached, including whether building managers have the right to mandate drug treatment to specific providers.

"Where do they get the authority, or the ability to provide that kind of oversight?" she said, referring to the clinical training required to prescribe substance abuse treatment. "Who authorized or deputized them?"

While various agencies provide the taxpayer dollars that help the homes run, none appears to certify or oversee New York's growing number of sober homes.

OASAS certifies drug treatment programs, but despite the agency's concerns about the sober homes associated with CIS Counseling, OASAS Communication

Director Jannette Rondo told *The Crime Report* that sober houses are out of the agency's purview.

"The scope of our legal authority is related to services provided in OASAS certified treatment programs which does not include housing," she wrote in an email. "When those types of issues are raised we will make referrals to the appropriate state and local authorities."

Rondo declined to name those authorities, "as the matters are still likely the subject of ongoing investigations."

HRA issues welfare shelter payments on behalf of residents, but a spokesperson said HRA "does not place people receiving cash assistance in apartments" nor does it certify or inspect the housing.

The New York State Department of Corrections and Community Supervision, or DOCCS, officially has a five-year, \$866,250 contract with Narco Freedom for 20 beds meant to help parolees transition back into the community.

This gives the agency some authority over those beds, yet they are only a fraction of those used by parolees. DOCCS records show that as of May 2013 more than 425

parolees lived at addresses identified by *The Crime Report* as Narco Freedom sober homes, sometimes dozens per address.

DOCCS said that while it refers parolees to treatment programs, and must approve any residence in which parolees live, it does not refer directly to housing, nor does it certify or oversee the housing.

"We're not in charge of finding residences," said DOCCS spokesperson Thomas Mailey. He could not explain why so many parolees appear to end up at Narco Freedom houses.

The system has grown with few eyes on it, leaving neighborhoods with little say when houses come in, and residents within them little recourse if things go wrong.

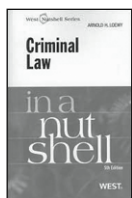
## Cast Adrift

WHEN JAMES GREGORY WAS PAROLED from prison, he didn't have much money or a family to take him in.

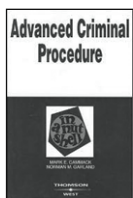
As a condition of a 2009 drug conviction, his parole officer mandated him to a drug treatment program at Narco Freedom, which, he was told, could also offer him a bed.

On August 2, 2010, he went to Narco Freedom intake in the Bronx. There, he was

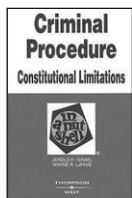
## New Titles Available in PLN's Bookstore



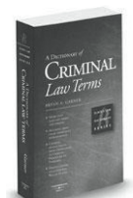
**Criminal Law in a Nutshell**, by Arnold H. Loewy, 5th edition, 387 pages. **\$43.95**



**Advanced Criminal Procedure in a Nutshell**, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **\$43.95**



**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFare, 7th edition, 603 pages. **\$43.95**



**A Dictionary of Criminal Law Terms (Black's Law Dictionary® Series)**, by Bryan A. Garner, 768 pages. **\$33.95**

- ☐ Criminal Law in a Nutshell ☐ Advanced Criminal Procedures in a Nutshell ☐ Criminal Procedure  
☐ Dictionary of Criminal Law Terms

Amount enclosed (add \$6 S&H for orders under \$50; free shipping over \$50) \_\_\_\_\_

By ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

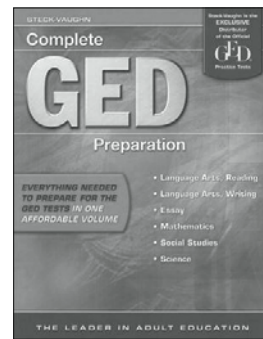
Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**PRISON LEGAL NEWS**

PO Box 1151 • Lake Worth, FL 33460  
Tel [561] 360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)



## Complete GED Preparation [Paperback]

Publisher: Steck-Vaughn; 2nd edition  
928 pages; \$24.99; Item #: 1099

Over 2,000 GED-style questions thoroughly prepare learners for test day. This single book offers thorough coverage of the revised GED Test with new test information, instruction, practice, and practice tests. Answer key included.

Order from: **Prison Legal News**  
(Add \$6 shipping for orders under \$50)  
**PO Box 1151**  
**Lake Worth, FL 33460**  
**Phone: (561) 360-2523**  
**[www.prisonlegalnews.org](http://www.prisonlegalnews.org)**

assigned to "Freedom House III," a five-story building nearby at E. 152nd Street.

Attending Narco Freedom drug treatment sessions was a house rule.

Like all parolees, Gregory had to have the residence signed off by his parole officer.

DOCCS is familiar with the building. In April 2012, DOCCS records showed 89 parolees lived at that address.

Though DOCCS asserts it does not mandate parolees to specific housing, "sober homes" have come to serve the parole process.

"They're another set of eyes for us, just to make sure that someone's reentry into the community is going the way it should," said DOCCS spokesman Mailey.

When Gregory arrived at Freedom House III, "things were really bad," he recalled during an interview in April 2012.

A sturdy man carefully dressed in a hat and a thick gold chain, he spoke matter-of-factly about the bedbugs in the house and how, several times during the winter of 2011, there was no heat or hot water, a memory confirmed by public records.

But he said he was most troubled

watching his fellow residents tossed out if they missed group or exhausted their treatment funding.

"They were throwing people out left and right," said Gregory. He described men whose belongings were stuffed in black plastic bags, then put out on the curb with their owners.

"This is what happens when they illegally put you out: you go backwards," said Gregory. "You get depressed. You start using. When you start using, you commit crimes."

A few times, he said, residents tried to protest, telling police they had a right to stay under city housing laws, which require landlords to get court orders before evicting tenants.

"But every time the police came, they'd be on the side of Narco Freedom," he said. "Their excuse is that this is a program."

Eventually it was Gregory's turn. On February 2, 2012, he came home to the news that it was time to leave. He took Narco Freedom to court.

In court filings, Narco Freedom stated it operates the homes "for temporary use by its program participants during their treatment period."

Because Narco Freedom holds the lease, and is therefore the tenant, those who sleep in the bunks are not tenants but "licensees," argued Narco Freedom's attorney.

When that treatment is done, he argued, Narco Freedom had the right to make them leave without formal evictions.

The court did not agree, ruling that Narco Freedom and Gregory had a landlord-tenant relationship.

Gregory returned to Freedom House III.

The case was a victory for others who live in this gray world, said his attorney, Matthew Main of MFY Legal Services, which has brought several suits on behalf of sober home residents, including those who once lived at homes run by CIS Counseling Services.

While Main said he believes three-quarter houses address a desperate need, he thinks the system often harms the very people it purports to help.

"This system is like a conveyor belt that grabs the most vulnerable people from our communities," said Main. "It takes people who don't have anywhere else to turn, stuffs

## |V|F|C| VOICE FREEDOM CALLS

# SEND AND RECEIVE VOICE MESSAGES FROM INSIDE PRISON.

### INTRODUCING VOICE FREEDOM CALLS

Get your own personal message number in any US area code.

Friends and family call your number to leave voice messages. You call your number and listen to messages, leave messages, and **place return calls – local or long distance, same price.**

And you can place multiple return calls from a single connect.

VFC works with all major prison and jail telecom providers: GTL, Securus, and others.

**Inmates, get your own personal message number now, in less than 5 minutes by calling (603) 786-7204 today.**

Or have friends or family call (800) 734-6026 to setup for you.

Get the most out of a single phone call. \$4.95/month, 25 cents per message, 15 cents per minute.

**Free brochure, send SASE to Voice Freedom Calls, 2442 NW Market Street #612, Seattle, WA 98107. Visit us at [VoiceFreedomCalls.com](http://VoiceFreedomCalls.com)**

mSP | LAW



## Appealing a Conviction? Hire an Appellate Attorney.

You wouldn't hire a **heart surgeon** to perform **brain surgery**. Don't hire a **trial attorney** to handle **your appeal**. Hire someone who focuses on **criminal appeals**.

Hire the **Law Office of Matthew S. Pinix**, attorneys with more than 10-years' combined experience handling **criminal appeals** in **Wisconsin** and **Illinois**.

**Law Office of Matthew S. Pinix, LLC**  
1200 East Capitol Drive, Suite 220  
Milwaukee, Wisconsin 53211  
(414) 963-6164  
[www.pinixlawoffice.com](http://www.pinixlawoffice.com)

» Rated by Super Lawyers®  
» Rated by [avvo.com](http://avvo.com)  
» Better Business Bureau accredited



## A Home of Their Own (cont.)

them into these dilapidated apartments, and has them stay there to attend a treatment program only for as long as it's necessary to recover. And then spits them out."

### A Booming Business

NARCO FREEDOM IS THE "#1 OUTPATIENT alcohol and substance abuse treatment program in the city," according to its website. In 2012, OASAS records show the organization's outpatient and methadone clinics served about 7,770 unique patients.

Narco Freedom's revenue was \$46.7 million in 2011, according to its most recent tax filings.

About 90 percent of the organization's revenue typically comes from Medicaid payments for outpatient substance abuse treatment and its methadone program. Filings show CEO Alan Brand earned a salary of \$386,000 that year.

Despite a booming business, routine certification reports obtained from OASAS through a Freedom of Information request point to issues at the program.

One routine OASAS review, conducted in March 2012 at the Narco Freedom program at 250 Grand Concourse in the Bronx,

found that patients were not responding to treatment or meeting their defined goals.

For example, in 19 of the 20 cases studied, patients had tested positive for illicit drugs twice within three months. Their treatment plans had not been changed to address the continued drug use.

Reviewers also found that Narco Freedom had submitted reports to OASAS with inaccurate admittance and discharge dates. Nevertheless, the program was recertified.

OASAS spokesperson Rondo said the program is "subject to ongoing monitoring."

A review from one former resident of Narco Freedom's house in Rockaway was more blunt.

"They got low standards," he said, asking not to be named for fear of retribution. "As long as residents go to group, Narco Freedom doesn't care what they do."

### "Guaranteed Rent"

NARCO FREEDOM'S SOBER HOUSING HAS proven a successful model for another person as well: Jay Deutchman, who, property records show, owns at least six buildings used as Narco Freedom houses, a relationship stretching back about 15 years.

He also owns at least one used as a home by the now-defunct CIS Counseling Services. (MFY Legal Services is currently

engaged in litigation on behalf of former tenants at the home).

He maintains an office in that former sober home in Greenpoint, Brooklyn, where in February 2012 he puffed through cigarettes while working both hands to answer calls.

In between, he explained how the city's tenant-friendly laws make leasing to an organization preferable to leasing rooms or apartments to individuals, who may not keep up their end of the rental agreement.

"When you have a not-for-profit there's good money," Deutchman said. "When you have a tenant who doesn't care about anyone or anything, it's not as good."

He added that leasing to non-profits has "worked out in my buildings for years."

Deutchman told concerned residents in Rockaway as much in April 2010, after closing his \$2.7 million purchase of the Rockaway Park Hotel, where Terrance Streeter found himself two years later.

"We like guaranteed rentals and therefore we take people that have subsidies from the government," he told the local paper, *The Wave*.

Though displeased about the perceived "halfway house" coming to the neighborhood, Danny Russiello, president of the local 100th Precinct Community Council, said the neighborhood had little recourse against a private landlord.

Locals soon learned Deutchman had leased the hotel to Narco Freedom. After repeated complaints to Narco Freedom about residents of the house loitering and bothering passersby, things improved.

"They did want to work with us," said Russiello.

But he said cleaning things up shouldn't

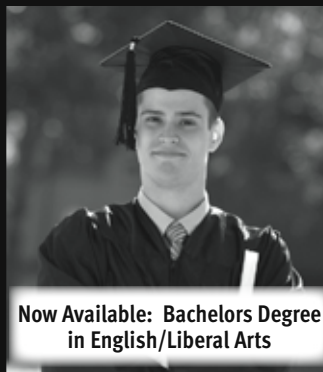
**inmateMAGS**.com  
formerly MyMagstore.com

Buy 1200 **SINGLE** Copies of Magazines • 1200 **Subscriptions** • **VIP Service**  
**1800 Newspapers** • Payment with **Stamps** • **Prepaid Accounts**  
Send \$3 or 10 Stamps for **50+ Page Full Catalog** (\$3 Discount Coupon Included)

**InmateMAGS.com**  
4208 University Way NE  
Seattle, WA 98105

**www.inmateMAGS.com**  
Info@inmateMAGS.com  
206-322-6397

## Earn an Adams State University Degree via Correspondence Courses



Now Available: Bachelors Degree  
in English/Liberal Arts

- Correspondence Courses via mail • No internet access required
- Degree options available — Associate of Arts or Science, Bachelors degrees in English, Business Administration, Government, History, Interdisciplinary Studies, Sociology, Paralegal Certificate Program, Masters Degree in Business Administration
- Affordable tuition — \$165/semester hour for undergraduate correspondence courses, \$350/semester hour for Masters level correspondence courses  
Payment options include cashiers check, credit card, money order or verified personal check
- Accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools
- 16+ years of experience serving incarcerated students
- Veteran friendly
- FREE unofficial evaluation of previously earned credits



Call or write to receive additional  
information — 800-548-6679  
Adams State University  
Office of Extended Studies, Suite 3000  
208 Edgemont Blvd. Alamosa, CO 81101  
[www.adams.edu](http://www.adams.edu)



have taken so much on the part of Rock-away residents.

"The responsibility should be up to the people running the program," he said.

### Finding a Solution

AT THE PRISONER REENTRY INSTITUTE, Ann Jacobs wrestles with the quandary these homes present.

"They're bad and they need to be improved, but it would be a disaster if there was just an enforcement reaction and they were closed wholesale," she said. Residents could end up at the doors of the shelters they sought to avoid, which are already stretched to meet the needs of nearly 50,000 homeless each day.

"The homeless system isn't equipped to deal with thousands of more people," Jacobs said.

Legislators in Suffolk County, New York are working on a solution with a plan they say will regulate the system without forcing thousands of residents to the street.

The "Suffolk Healthy Sober Home Act" calls for OASAS and the Suffolk County Group Home Oversight Board to monitor and certify all sober homes. If passed, the homes would undergo regular building inspections.

Those operating without certification would be fined \$10,000. Operators would also be required to "demonstrate good moral character," according to a press

release by State Senator Lee Zeldin, the bill's sponsor.

But no such oversight was in place in October 2012 when Terrance Streeter arrived in Queens where, three days later, Hurricane Sandy hit.

"On October 29th, the windows blew in," Streeter remembered. The house went dark. Pipes burst. Men waded through sewage-laden water.

Streeter said residents were told that Narco Freedom would evacuate them, but no one arrived. Instead, on the first Tuesday after the storm, police vans showed up to cart the residents away.

For months, Streeter moved through emergency shelters to temporary hotel rooms for the displaced, unsure of what he would do when the largess of the Federal Emergency Management Agency ran thin.

In February 2013, Streeter received good news. As a hurricane victim, he qualified for shelter.

At the Frederick Douglass Houses, a public housing complex in Manhattan, Streeter found what he had searched for since getting sober.

It is clean. It is quiet. For one-third of his monthly disability check, it is his.

It took a deluge, but he has a place to call home.

"I have my own apartment," he said. "It's a studio apartment, but it's okay for now."

### Life (and Death) in a "Three-Quarter Home"

DESPITE HER SON'S LONG ADDICTION TO painkillers, Kelly O'Neill had never before asked him to move out of their home in Suffolk County, New York.

But in the fall of 2010, 19-year-old Billy DeVito became too difficult to live with and she told him to leave. She hoped it would be a wake-up call.

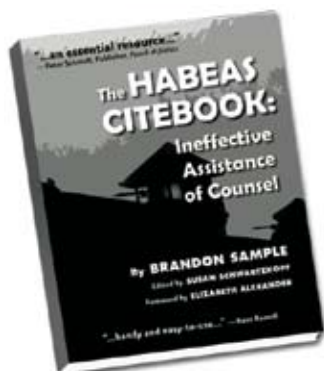
"I picked up his bags and put him out," she said in an interview. "I never did that before."

She helped arrange for him to move into a facility with a promising sounding description: a "sober home."

But four months later, Billy DeVito was dead.

He had overdosed on heroin – in a place where drugs and alcohol were supposed to be forbidden.

The home where DeVito died was one of hundreds of similar programs that have become a crucial – yet often dangerously unregulated – component of substance abuse treatment and prisoner re-entry in New York State.



### FREE BOOK!

Get *The Habeas Citebook* with purchase of a 4-year subscription to *Prison Legal News*. Offer good for new subscriptions and renewals.

Special limited time only! All sales final and no refunds. Order now for this great deal worth \$49.95.

Prison Legal News • PO Box 1151 • Lake Worth, FL 33460

Tel [561] 360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

**STRENGTH STACK 52**  
114 BODYWEIGHT EXERCISE CARDS INSIDE!  
**JUST \$21.95!\***  
(shipping included)  
**Experience the Game of Fit!**

Send money orders or institutional checks made payable to:  
Prisoner Assistant  
Po Box 704  
Lake Harmony PA 18624

#### Features:

- Soft cover book with perforated-card stock for playing cards.
- Many fitness games available.
- Effective NEW bodyweight training system.
- Exercise your entire body with no equipment.

## A Home of Their Own (cont.)

For years, local officials have been struggling without success to convince the myriad state agencies that interact with these homes – also known as three-quarter houses – to effectively monitor them.

In March 2013, the Suffolk Sober Home Oversight Board, a committee tasked by the county legislature with coming up with a solution, issued a request for qualifications (RFQ).

The board offered to pay \$500 per resident – \$200 more than the state's Department of Social Services currently pays – to any qualified firm that would agree to provide 24-hour supervision, a zero tolerance policy for drugs and alcohol, and submit to regular inspections.

### New Legislation

ON OCTOBER 15, 2013 THE BOARD MET to discuss the RFQ, as well as a new piece of legislation, "The Suffolk Healthy Sober Home Act," which would codify many of the board's qualifications and create an anonymous hotline for resident complaints.

Neither the legislation nor the RFQ has gained much steam, members of the board noted during the meeting.

The board received only three responses and none promised to meet all the qualifications.

Rosemary Dehlow, chief program officer for Community Housing Innovations, told the board her firm wouldn't participate because the new restrictions are too costly.

"Five hundred dollars is not going to cut it," Dehlow said. "Everything in this RFQ I believe in. You want solid housing; you want restrictions on certain things; you want to make sure they're clean."

But, Dehlow said, the legislation and the RFQ ignore the underlying void that sober homes have come to fill.

"Why do sober homes have 20 people in a house? It's about affordable housing," Dehlow said.

An hour's drive away in New York City, where 50,000 people struggle with homelessness each day and the demand for affordable housing is especially high, three-quarter homes have become a critical part of the recovery and reentry landscape.

A study of the New York City homes, published in October 2013 by the Prisoner Reentry Institute at the John Jay College of Criminal Justice, reveals that "building code violations are rampant at the houses, which are funded almost entirely by public dollars."

"Tenants described small rooms with two to four bunk beds accommodating four to eight people. In some cases, bunk beds are placed in living rooms, hallways, and even kitchens," according to the study.

"Infestations of bed bugs, rats, mice, roaches, and other vermin often plague dwellings, and structural issues commonly remain in dangerous disrepair."

Despite the squalid conditions, New York City housing advocates and officials are struggling against a system that critics say provides only two options for problem buildings: looking the other way, or perhaps worse, shutting them down wholesale.

According to Jerilyn Perine, executive director of the non-profit Citizens

Housing Planning Committee, that could mean a return to prison for parolees who must live at their declared addresses; for those hoping to avoid the city's notorious homeless shelters, it could mean a return to the street.

"It's the classic public policy conundrum," Perine told a public forum at John Jay College on October 17, 2013.

"The axe that government has ... is a vacate order. That punishes the owner a little bit, but it really punishes the people living in these places," added Perine, a former commissioner of the city's Department of Housing Preservation and Development.

The report, based on data from focus groups, documents a complicated web of public monies flowing into sober homes and three-quarter houses.

In New York City, the Human Resources Administration pays \$215 per month for each qualifying tenant; those who receive Social Security or unemployment benefits pay \$350.

### Major Profits

IT DOESN'T SOUND LIKE MUCH, BUT WITH residents stuffed eight to a room, it can mean major profits for those who operate the houses.

An investigation by *The Crime Report* and the Prisoner Reentry Institute study each found rampant claims that certain sober home operators, who often also collect Medicaid and disability payments from residents, were illegally coercing residents to attend specific drug treatment programs.

Tanya Kessler, a staff attorney at the Three-Quarter House Project at MFY Legal Services, a firm that has brought several suits on behalf of sober home residents, suggested at the John Jay forum that some operators

#### WINNING HABEAS CORPUS & POST CONVICTION RELIEF Revised 4th Ed. 2012

Main subject: Ineffective Assistance of Counsel-"LAC"

Atty Kent Russel writes: "Simply the best source for a quick review on major subjects in the criminal process."

<> A virtual law library in a book, major constructional issues

<> 6th Amendment & IAC, Duty to investigate

<> Forensics, Plea IAC, Jury Instructions

<> §2254 & 2254 Procedure, Clearly established law

#### POST CONVICTION RELIEF FOR WASH. STATE-Personal Restraint Petition

The only book for Wash. State prisoners who seek collateral review by PRP or CrR 7.8 motion. Covers all aspects of preparing a PRP, time bar, facial invalidity, Plea bargain, sentencing, incl. case law & rules.

#### ORDER: (price incl. tax, plus S&H)

[ ] Winning Habeas Corpus...	\$ 59.50
[ ] Post Conviction Relief for Wash.	\$ 49.50
[ ] Both Books	\$ 95.00

To: FAST LAW PUBLISHING

Box 577, Upland CA 91785 On-line [www.fastlaw.org](http://www.fastlaw.org)



#### FULTON & WELCH TEXAS PAROLE ATTORNEYS

- o AFFORDABLE
- o PERSONALIZED PACKET
- o 2 HEARINGS
- o MEET WITH YOU & FAMILY

"LET US GET YOU HOME SOONER"

10701 Corporate Dr., Ste. 390,  
Stafford, Texas 77477



get kickbacks for referring residents.

"The question becomes, what is the connection?" Kessler said. "Why would a landlord be so invested in their tenants going to that specific program? What we hear over and over again is that there's a money thing going on."

At both the Suffolk and John Jay discussions, advocates and local officials heard from state officials who argued their agencies were incapable of assuming greater oversight responsibilities.

Debbie Egel, a staff attorney for the New York State Office of Alcoholism and Substance Abuse Services, said at the Suffolk hearing that the only way an oversight initiative can work is if it has the cooperation of all the agencies that feed funds into sober homes.

"OASAS can't fix this problem by itself, that's the reality," Egel said. "Everyone can blame DSS (New York State's Department of Social Services), but this is a partnership of multiple agencies on different levels that have to face what's going on." For O'Neill, whose son died in a Suffolk sober home, Egel's explanation rings true.

O'Neill addressed the board at the Suf-

folk County hearing, with a grim recital of the state agencies she reached out to after her son's death.

First, she wrote to the office of state Attorney General Eric Schneiderman and was advised to contact OASAS. Her letter, she said, was passed on to DSS—with an explanation that it was not within their jurisdiction.

DSS repeated the response.

"It was being passed all over, because no one had any jurisdiction. I was flabbergasted," O'Neill said.

When her son left three years ago, O'Neill thought she was sending him to a safe place to deal with his addiction, but as she navigated New York's labyrinth of oversight agencies, she realized she had let her son move to a place where no one was watching out for him.

"I have to live with this every second of my life ... when you hear 'sober house,' you think 'sober,' but it clearly wasn't a safe environment," O'Neill said. ■

*Graham Kates is deputy managing editor of The Crime Report. Lisa Riordan Seville, a former deputy editor at The Crime Report, is an independent reporter. This article was first*

*published as two stories in July and November 2013 in The Crime Report (www.thecrime.com), the nation's most comprehensive daily source of criminal justice news and resources. It is reprinted with permission.*

**PENACON.COM**  
Helping the incarcerated community gain connections around the world!  
  
Post your profile on an easy to navigate website for millions of viewers to see. Gain new penpals and look forward to receiving mail!  
  
One Year Ad Only \$35  
Until Release Date Ad \$95  
  
Request a form today!  
Send a S.A.S.E. to:  
Penacon.com  
P.O. Box 1037  
Edna, TX 77957  
  
USE CODE  
PLN5OFF  
FOR \$5 OFF



  
**\$9.95**  
per month  
  
\*UNLIMITED JAIL CALLS\*  
"WE BEAT ALL OUR COMPETITORS"  
**SWITCH TO US TODAY!!**  
No Contracts  
No Credit Checks  
No Equipment to buy  
  
LOWER THE CALL RATES FOR:  
GLOBAL TEL LINK  
SECURUS  
V-CONNECT  
PAYTEL  
ICSOLUTIONS  
VAC  
PLUS MORE  
  
FEDERAL \* STATE \* COUNTY  
SAME DAY ACTIVATION - NO PER MINUTE CHARGES ON OUR END. JUST \$9.95 A MONTH!  
**GET A LOCAL NUMBER TODAY**  
888-776-2012  
**www.JailCallsUSA.com**  
Online Payments Accepted 



**ORDER THE NEW PRISON OFFICIAL CATALOG - ONLY \$10**  
  
ISSUE#1 OR ISSUE#2  
5 FREE HOT MODEL PHOTOS INCLUDED WITH PURCHASE!  
**PRISON OFFICIAL**  
WWW.PRISONOFFICIAL.COM  
INMATES #1 RECOMMENDED  
  
CORRECTIONAL FACILITY APPROVED  
GET MAIL  DONT DELAY  
**ORDER THE NEW PEN PAL LIST OF 50 REAL ADDRESSES TO FEMALES WAITING TO CORRESPOND TO PRISONERS**  
**RECENT PHOTOS INCLUDED!**  
**SEND \$49.95**  
  
Inmates post your profile on our Pen Pal website  
**www.PrisonOfficial.com**  
2 year membership - Send \$30  
250 word limit send S.A.S.E for return of your photo  
  
Send Facility Checks/Money Orders To:  
**MUST ADD \$2 S/H TO ALL ORDERS**  
**PRISON OFFICIAL**  
**P.O. BOX 1427**  
**WARRENVILLE IL 60555**



# From the Editor

by Paul Wright

**T**HIS MONTH'S ISSUE OF *PRISON LEGAL News* marks 24 years and 284 issues, which makes *PLN* the longest continuously-published prisoners' rights publication in U.S. history. We have grown significantly from a ten-page, hand-typed newsletter to our current 64-page magazine format. While some things have changed over the years others have remained constant, such as continuing to bring our readers high quality news and legal information they can use to help themselves and advocate for the rights of prisoners.

Another constant, which continues to distract us from our publishing work, is the ongoing government censorship of *PLN* and the books we distribute. The first three issues of *PLN* were banned in all Washington State prisons when we first began publishing in 1990. Today we have been banned in the state of Florida since 2009 – which is the subject of pending litigation – and have filed suit against the Nevada DOC for censoring *PLN*'s books.

In addition to prison systems, many jails around the country ban all books and magazines and even letter correspondence from *PLN* to prisoners. We currently have three staff attorneys and two paralegals whose primary mission is to simply ensure that prisoners can receive *PLN* and the books we distribute. Perhaps someday I will live in a country that respects freedom of speech and the notion of an independent media, but I think Iceland is too cold.

Likewise, we continue to meet resistance from government agencies when we submit public records requests, and have to

file lawsuits to obtain documents pertaining to prisons and jails. Such records are in theory public but in reality remain shrouded in secrecy.

I would like to thank everyone who has helped make *PLN* possible over the years: our subscribers, donors, supporters, volunteers, employees, attorneys and many others who at this point are far too numerous to name. As we approach our 25<sup>th</sup> year of publishing, we plan to expand our circulation and ask for your help in doing so. Greater circulation ensures that we keep our subscription costs down and also widens the impact we have. If you know someone who might be interested in *PLN*, whether imprisoned or not, please ask them to subscribe.

Further, expanding the number of our advertisers allows us to bring you even more news and legal content, as more advertisers lets us increase our page count. If you do business with companies that are interested in reaching an incarcerated audience, let them know about *PLN* and tell them to contact us. If you patronize companies that advertise in *PLN*, let them know where you saw their ad and ask them to continue advertising.

Lastly, we try not to make mistakes in *PLN*, but we correct them when we do. Last month's cover story interview with Noam Chomsky stated that Professor Chomsky is 75 years old. He is actually 85.

Enjoy this issue of *PLN* and please encourage others to subscribe. ■

## Seventh Circuit Reverses Dismissal of Prisoner's 99-Page Complaint

by Mark Wilson

**T**HE SEVENTH CIRCUIT COURT OF APPEALS has reversed a district court's finding that a prisoner's "99-page complaint defies understanding, rendering it unintelligible and subject to dismissal on that basis."

In 2011, federal prisoner Jurijus Kadamovas, who is Lithuanian and claims to be English-illiterate, filed a *Bivens* action alleging that prison officials violated his religious rights and subjected him to cruel and unusual punishment.

Before the defendants filed an appearance in the case, an Indiana federal district court dismissed Kadamovas' complaint with leave to amend. The case was later dismissed with prejudice after he failed to file an amended complaint.

In an opinion authored by Judge Posner, the Seventh Circuit explained that "length and unintelligibility, as grounds for dismissal of a complaint, need to be distinguished."

The Court of Appeals noted that "Length may make a complaint unintelligible, by scattering and concealing in a morass of irrelevancies the few allegations that matter." However, "a complaint may be long not because the draftsman is incompetent or is seeking to obfuscate ('serving up a muddle' to the judge, as such complaints are sometimes described)." Rather, it may be lengthy, like Kadamovas' complaint, because it contains a large number of distinct claims.

"District judges are busy, and therefore

### TEXAS ONLY

Post-conviction State and  
Federal Habeas Corpus  
Parole Representation  
Family Law

#### Ashley Burleson

Attorney and Counselor at Law  
1001 Texas Avenue, Suite 1400  
Houston, Texas 77002

### WHEN IT IS YOUR FAMILY'S FUTURE, EXPERIENCE MATTERS

#### STATE AND FEDERAL POST-CONVICTION AND APPEALS

Licensed since 1995, hundreds of appellate briefs and habeas petitions,  
capital qualified for habeas and appeals in Texas and U.S. Southern District of Texas,  
Motions for New Trial, Rule 35 and 60b motions, re-sentencing and arrest of judgment.

Call or write the Law Offices of Patrick F. McCann, 713-223-3805.  
909 Texas Ave, Ste 205, Houston, Texas 77002 • writlawyer@justice.com

**Serious financial inquiries only.**



have a right to dismiss a complaint that is so long that it imposes an undue burden on the judge, to the prejudice of other litigants seeking the judge's attention," the appellate court observed; however, "surplusage can and should be ignored."

While "one doesn't need 99 pages to make" Kadamovas' allegations, "the complaint isn't in fact 99 pages long, as the district judge thought," the Seventh Circuit wrote. "It's 28 pages long, the last 71 pages being an appendix, which the judge could have stricken without bothering to read."

As used in Federal Rule of Civil Procedure 8(a)(2), "short'... is a relative term," the Court of Appeals found. "Brevity must be calibrated to the number of claims and also to their character." Given the Supreme Court's requirement that a complaint establish plausibility of its claims pursuant to *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009) [PLN, July 2009, p.18], the appellate court observed that "complaints are likely to be longer – and legitimately so – than" before the ruling in *Iqbal*.

Noting that "unintelligibility is distinct from length, and often unrelated to it," the Court of Appeals determined that "far

from being unintelligible, the complaint in this case ... is not only entirely intelligible; it is clear."

The Court found that "the complaint charges that in retaliation for the plaintiff's going on hunger strikes, the defendants used excessive force to force feed him and extract blood samples from him, placed him in a cell infested with feces, denied him minimal recreational opportunities, refused to allow him to have a Bible, refused to allow him to file grievances, and tried to block his access to the federal courts."

The Seventh Circuit thus concluded that Kadamovas' complaint did "not violate any principle of federal pleading," and remanded the case for further proceedings. See: *Kadamovas v. Stevens*, 706 F.3d 843 (7th Cir. 2013).

Following remand, on September 30, 2013 the district court granted in part and denied in part the defendants' motion for summary judgment, finding

that portions of Kadamovas' personal declaration were inadmissible because they contained hearsay and "legal assertions, arguments, conclusions, or conjecture not otherwise supported by admissible evidence." The court granted summary judgment or judgment as a matter of law to the defendants on most of the claims, but declined to do so on a claim alleging that one defendant was deliberately indifferent to Kadamovas' serious medical needs.

The district court appointed counsel to represent Kadamovas in November 2013, and this case remains pending. See: *Kadamovas v. Lockett*, U.S.D.C. (S.D. Ind.), Case No. 2:11-cv-00015-WTL-DKL; 2013 U.S. Dist. LEXIS 141795. ■

## NEW FRIENDS, HIGHER EDUCATION, AND EMPLOYMENT & HOUSING UPON RELEASE THROUGH WRITEAPRISONER.COM PROFILES

**Contact WriteAPrisoner.com & Start Looking Forward To Mail Call!**

**AS SEEN ON**  
CNN, 20/20, Fox News,  
Dr. Phil, O Magazine,  
E! True Hollywood,  
and hundreds more!

**WriteAPrisoner.com...**  
Simply the largest, highest ranked, & most visited website of its kind!\*

- Pen-pal Profiles are affordably priced at \$40 for the first year, \$30 for renewing year
- Features a comprehensive search that allows viewers to find your profile by age, race, location, keywords, & more - 32 search options in all
- Your new friends can email their first message to you along with a photo
- Advertises non-stop on every major search engine with thousands of websites linking back to us
- Offers free Reintegration Profiles for inmates seeking employment and housing upon release and education during incarceration
- Translated into 51 languages & geared for international search engines
- Viewers can "subscribe" to your profile to be notified when your profile is updated, blog is added, artwork is posted, poetry is added, your release is near & much more
- Pen-pals have the option of helping you with a broad range of topics using WriteAPrisoner.com's free Self-Help Series

**WriteAPrisoner.com**  
We'll see you at mail call!

**Get Started Today!**

Friends & family can submit your entire 250 word profile, photo, and payment for you online by visiting

**www.writeaprisoner.com/post**

Or for a FREE Brochure, Send a S.A.S.E. to:

WriteAPrisoner.com  
PO Box 10- PLN  
Edgewater, FL 32132 USA

Proud member of the Better Business Bureau of Central Florida & the Southeast Volusia Chamber of Commerce.  
\*Our website traffic can be independently verified at [www.quantcast.com/writeaprisoner.com](http://www.quantcast.com/writeaprisoner.com)

# PRISONER ASSISTANT

REHABILITATION AND REENTRY PLANNING

**Join Our Exclusive Membership, Open a Bank Account and Gain Access to Our Services!**  
We only provide services to our clients, no exceptions. **MEMBERS ONLY**

Bank Account under your social security number. Deposits, Statements, Money Orders, Bank Checks, Green Dot, Stamp Exchange, Wire Transfers, Direct Deposit & PayPal.

**BANKING & FINANCE**

**Prisoner Concierge**

Internet Purchases, Gift Cards, Greeting Cards, Lottery, Sporting News & Current Events, People Search, Personal Shopper. "If It Can Be Done, We Will Try To Do It", see our catalog for more.

We can do any Graphic Design project. Printed Material, Musical Emails, Creative Writing, Photo Reproduction & Forwarding, Book Publishing, Book Cover Design, Press Releases, Portfolio Creation, and Website Building.

**GRAPHIC**

**Virtual Office**

Mailboxes, Emails, Faxes, Texts, Scanning, Copies, Typing, Storage, Document Preparation, Internet Research, Prepaid, Contract & Computer Aided Phones.

Place your profile on [prisonerassistant.com](http://prisonerassistant.com) and access our Special Features; Classifieds, Portfolios, Posts & Blogs, Market Place and Sponsor a Prisoner.

**social content media**

PO Box 704-AD1  
Lake Harmony, PA 18624-0704  
[www.prisonerassistant.com](http://www.prisonerassistant.com)  
[info@prisonerassistant.com](mailto:info@prisonerassistant.com)  
(570) 722-5800

For more information - send \$4.50 to "Prisoner Assistant" for an Application Package and 80 page color catalog. If you send an SASE you will only receive a brochure.

**Business Development**

**JOIN NOW!**

**Credit Development**

The services below are available to all prisoners - not just our clients

**Free E-Newsletter Update**

We have reviewed our E-Newsletter efforts via Corlinks and the benefits/inmate costs involved. The new E-Newsletter arrival date will fluctuate and the frequency will be up to 5 times a month containing information relevant to Prisoner Assistant and reentry planning. Sign Up Today! [Info@prisonerassistant.com](mailto:Info@prisonerassistant.com)

**Banking and Financial Management Course**  
120 pages, complete course with 8 chapters and exams. Transcript and Certificate available. Send \$25.00 to Prisoner Assistant at the address above with a request for the course. Open to Everyone.

**Personal Reentry Guide and Journal**  
233 pages, complete course with 7 chapters and exams. Transcript and Certificate available. Send \$30.00 to Prisoner Assistant at the address above with a request for the course. Open to Everyone.

# California Improves Compensation Process for Wrongfully Convicted Prisoners

ON OCTOBER 13, 2013, CALIFORNIA Governor Jerry Brown signed into law Senate Bill 618, legislation that streamlines the process for providing financial compensation to people who are wrongfully convicted, exonerated and released from prison. The bill had been introduced by state Senator Mark Leno.

SB 618 updates California Penal Code 4900, enacted in 2000, which provides for \$100 for each day of incarceration resulting from a wrongful conviction. The law also required exonerated prisoners to undergo a second, smaller trial by a compensation board to establish their innocence.

SB 618 mandates two important changes. First, when a judge grants a writ of habeas corpus, those findings are binding on the compensation board; second, prisoners who are exonerated and freed no longer have to go through another hearing to prove their innocence before obtaining compensation.

The purpose of modifying the existing law is to provide more expedient relief to wrongfully convicted prisoners like Timothy Atkins.

Convicted at age 17 and incarcerated for 23 years for a murder he did not commit, Atkins was released in February 2007 after the state's witness admitted being coerced by police to name him as the perpetrator.

Regardless, he was denied compensation in 2010 because the compensation hearing board did not believe he had established his innocence "by a preponderance of the evidence," even though that same evidence had been used to reverse his conviction and set him free.

From 2000 to 2011, only 11 of 132 wrongfully convicted prisoners in California received financial compensation from the state. Their payments ranged from \$17,200 to \$756,900.

SB 618 was championed by the American Civil Liberties Union, the California Innocence Project and the Northern California Innocence Project.

"The goal of the compensation law is to enable wrongfully convicted people to get back on their feet," said California Innocence Project director Justin Brooks. "The prior compensation process disrespected judicial decisions by giving no deference to them when deciding if a person had been

wrongfully convicted. It also allowed for a long and drawn out process. The new law is just, makes sense, and saves both time and money."

SB 618 streamlines the compensation process by concentrating the compensation board's attention on claims that require evaluation while allowing automatic approval of claims where a prisoner's innocence has already been established. Further, it ensures that board rulings on compensation petitions will be based on the same facts and rules of evidence considered by the court that reversed a prisoner's conviction and granted his or her release.

The law will benefit wrongfully convicted California prisoners like Daniel Larson, who was exonerated on January 27,

2014 after prosecutors dismissed the charges against him following a federal court ruling that found he was actually innocent. Larson had been convicted of possession of a concealed weapon and sentenced to 28 years to life under the state's three-strikes law. He served 14 years in prison.

Meanwhile, Timothy Atkins has appealed the initial rejection of his compensation claim. "I lost 23 years of my life for something I didn't do. I didn't give up while I was in prison. And I am most definitely not going to give up now," he stated. ■

Sources: [www.utsandiego.com](http://www.utsandiego.com), [www.californiainnocenceproject.org](http://www.californiainnocenceproject.org), <http://law.scu.edu>, [www.californiawatch.org](http://www.californiawatch.org), [www.law.umich.edu](http://www.law.umich.edu)

## North Dakota Courtroom Shackling Requires Independent Assessment by Judge

by Mark Wilson

THE NORTH DAKOTA SUPREME COURT has held that a lower court abused its discretion by failing to independently assess the need for shackling a defendant during a civil commitment discharge hearing.

On January 11, 2006, Robert R. Hoff was civilly committed as a sexually dangerous person. He requested discharge in September 2011 and appeared at a March 2012 discharge hearing while in "handcuffs tethered to his waist and an ankle chain."

Hoff's attorney requested that the shackles be removed, but the court refused. "The sheriff makes the determination whether or not [defendants] can be secured while they're here," the court explained.

"Not my call, Your Honor," a deputy stated. "The sheriff said no. They have to stay on."

At the conclusion of the hearing the court denied Hoff a discharge, finding that he "continues to be a sexually dangerous individual."

The state Supreme Court reversed, holding that "when Hoff's counsel requested that Hoff's restraints be removed, at a minimum, the court was required to engage in the analysis set out in" *Interest*

*of R.W.S.*, 2007 ND 37, 728 N.W.2d 326 (N.D. 2007). The trial court's failure to do so was not harmless error; this was true even though the hearing was of a civil nature, not criminal, and there was no jury.

On remand, the lower court "must consider on the record the factors established in *R.W.S.* ... to determine if it is necessary to restrain Hoff" during the discharge hearing, the Supreme Court wrote. "If the court determines restraints are not necessary, it must conduct a new hearing free of restraints." See: *In re Hoff*, 2013 ND 68, 830 N.W.2d 608 (N.D. 2013).

Following remand, the trial court found that Hoff remained a sexually dangerous person. Hoff petitioned for another discharge in 2013; his petition was denied and he again appealed. The North Dakota Supreme Court reversed again on April 3, 2014, finding that the lower court had "made insufficient findings of fact on whether Hoff has difficulty controlling his behavior." The Court remanded the case "for detailed findings of fact and conclusions of law on each legal element supporting the district court's decision to deny Hoff's petition for discharge." See: *In re Hoff*, 2014 ND 63 (N.D. 2014). ■

# States Renewing Their Prison Phone Contracts

*As state DOCs renew or rebid their prison phone contracts, you can help urge them to lower intrastate phone rates and eliminate commission kickbacks!*

*The Campaign for Prison Phone Justice needs your help in:*

**\*\*\*\* North Carolina, South Dakota and Virginia \*\*\*\***

The Departments of Corrections in the above states are in the process of re-bidding or renewing their prison phone contracts. Most DOCs receive a commission (kickback) on revenue generated from calls made by prisoners, which results in excessively high phone rates. Although the FCC voted last year to cap the costs of interstate (long distance) prison calls, which went into effect on February 11, 2014, the order does not apply to intrastate (in-state) calls; an estimated 85% of prison phone calls are in-state. This is an opportunity to ask DOCs to forgo commissions and ensure their new prison phone contracts are based on the lowest cost to those who pay for the calls – mostly prisoners' families.

## **Take Action NOW! Here's What YOU Can Do!**

Ask your family members and friends to write, email, call and fax the DOC and the governor's office (addresses and contacts are listed below), requesting that the DOC: 1) forgo commission payments when re-bidding or renewing its prison phone contract, and 2) base the new contract on the lowest calling costs. Lower prison phone rates should apply not just to long distance calls but also to in-state calls. For a sample letter or to easily send an email, visit the Campaign for Prison Phone Justice's website and click on the "Take Action" tab:

**[www.phonejustice.org](http://www.phonejustice.org)**

## **Prison phone contract information & Contacts:**

**North Carolina:** Receives a 58% kickback; existing contract expires on 6-30-2014. Charges \$3.40 for a 15-minute collect intrastate call and \$1.25 for a local call. **Contacts:** NC DOC, Commissioner David Guice, 4201 Mail Service Center, Raleigh, NC 27699; ph: 919-733-2126, fax: 919-715-8477, email: david.guice@ncdps.gov. Governor Pat McCrory, Office of the Governor, 20301 Mail Service Center, Raleigh, NC 27699; ph: 919-814-2000, fax: 919-733-2120, email: governorsoffice@nc.gov

**South Dakota:** Receives a 33-38% kickback; existing contract expires on 6-30-2014. Charges \$8.40 for a 15-minute collect intrastate call and \$2.70 for a local call. **Contacts:** South Dakota DOC Secretary Denny Kaemingk, 3200 East Highway 34, c/o 500 East Capitol Avenue, Pierre, SD 57501; ph: 605-773-3478, fax: 605-773-3194, email: mary.bisson@state.sd.us. Governor Dennis Daugaard, 500 East Capitol Street, Pierre, SD 57501; ph: 605-773-3212, fax: 605-773-4711, email: nila.novotny@state.sd.us

**Virginia:** Receives a 35% kickback; existing contract expires on 6-30-2014. Charges \$6.00 for a 15-minute collect intrastate call and \$1.00 for a local call. **Contacts:** Virginia DOC, Director Harold Clarke, P.O. Box 26963, Richmond, VA 23261; ph: 804-674-3000, fax: 804-674-3509, email: director.clarke@vadoc.virginia.gov. Governor Terry McAuliffe, 1111 East Broad Street, Richmond, VA 23219; ph: 804-786-2211, fax: 804-371-6351, email: traci.deshazor@governor.virginia.gov

## Florida Prison System Ordered to Provide Kosher Meals

A U.S. DISTRICT COURT HAS ORDERED the Florida Department of Corrections (FDOC) to begin serving kosher meals to hundreds of Jewish prisoners, following legal challenges after the FDOC discontinued its kosher meal program in 2007. Additionally, an Islamic advocacy group has warned that it is prepared to file suit if the FDOC fails to provide halal food to Muslim prisoners.

The legal fight for kosher meals began in September 2010 when Florida state prisoner Bruce Rich, an Orthodox Jew, filed a complaint in federal court under the Religious Land Use and Institutionalized Persons Act (RLUIPA), claiming the FDOC's refusal to provide a kosher diet violated his right to practice his religion.

At the time, Florida prisons offered three main diets: 1) the master menu, 2) an alternate entree with a non-meat substitute and 3) vegan meals. None were kosher. The FDOC also provides therapeutic diets prescribed by a doctor and had previously eliminated all pork and pork products from prison meals.

The U.S. Department of Justice (DOJ) joined the fray in August 2012, filing a lawsuit against the FDOC that alleged the state was in violation of RLUIPA by failing to accommodate prisoners' requests for kosher meals.

A federal district court granted the DOJ's motion for a preliminary injunction on December 6, 2013, ordering Florida

prison officials to begin serving kosher meals by July 1, 2014.

The state had previously announced it would begin providing kosher meals, and that a Religious Diet Program would start in April 2013 at the Union Correctional Institution, where Rich was housed, then be implemented statewide in September 2013. However, the rollout of the program was delayed.

Under the Religious Diet Program, the FDOC was to provide certified pre-packaged kosher foods to prisoners whose religious dietary needs cannot be satisfied by other meal options. Prisoners must first pass a religious sincerity test, which includes "eat[ing] from the alternate entree or vegan meal pattern" for up to ninety days."

The FDOC argued that its Religious Diet Program mooted the legal challenges related to kosher meals, but the Eleventh Circuit disagreed in a May 2013 decision in Rich's case. The appellate court noted that the FDOC's policy change came "late in the game," and only after Rich had filed his brief and after the DOJ filed suit.

The Court of Appeals further noted the FDOC said it would initially implement the Religious Diet Program solely at the prison where Rich was housed, less than two weeks prior to oral argument in his appeal. "These facts," wrote the Eleventh Circuit, "make it appear that the change in policy is 'an attempt to manipulate jurisdiction.'"

The appellate court also said there was

nothing to suggest the FDOC would not simply end the new program sometime in the future, as it ended the kosher meal program it had operated from 2004 to 2007. See: *Rich v. FDOC*, 716 F.3d 525 (11th Cir. 2013).

The kosher meal program that was offered by the FDOC starting in 2004 provided meals for prisoners deemed eligible through a screening process that measured the sincerity of their religious convictions. The program served prisoners of the Jewish, Islamic and Seventh Day Adventist faiths.

In April 2007, the FDOC commissioned a study group to review the program. The study group found several challenges associated with offering kosher meals, including adhering to the laws of kashruth, the set of Jewish dietary laws which prescribes religiously acceptable sources of food and methods of food preparation.

To be kosher, a food item must derive from religiously acceptable sources, be stored in kosher containers, be prepared in a particular manner and be served on tableware that has not contacted non-kosher food. In addition, meat and dairy products may not be mixed.

The study group also found that while there was an additional cost to provide kosher meals, the program was essential to allow prisoners to exercise their religious obligations. Citing in part the cost, the FDOC ended its system-wide kosher meal program in 2007 after receiving the study



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription! Quarterly drawing WINS \$100! (Void in New York) (Last Quarter's winner from Somers, CT.)

**TELL YOUR FRIENDS! ACT NOW!!**

PO Box 2063 • Fort Walton Beach FL. 32549  
[www.InmateMagazineService.com](http://www.InmateMagazineService.com)



## Inmate Magazine Service



group's report.

The DOJ's lawsuit contends that the FDOC is capable of providing kosher meals to prisoners consistent with its compelling governmental interests. The DOJ noted that the federal Bureau of Prisons and 34 other states provide kosher food to prisoners.

"Most states do provide kosher diets, even Texas where there are about 25-30 Jewish inmates," observed Eric Rassbach, an attorney for the Becket Fund for Religious Liberty. "Of the remaining states that don't, they tend not to be the ones with a big Jewish population."

One of the FDOC's arguments against implementing kosher meals was that many more prisoners than expected had requested the meals, and there was no way to adequately determine which prisoners are sincere and which are simply trying to take advantage of kosher food that is considered fresher and more palatable than regular prison fare.

While FDOC officials had expected around 300 prisoners to sign up for kosher meals, they received more than 4,400 requests following the district court's December 2013 order granting the DOJ's motion for a prelim-

inary injunction, according to a news report in the *Tampa Bay Times*. "The last number I saw ... was 4,417," FDOC Secretary Michael D. Crews told a state Senate committee. "Once they start having the meals, we could see the number balloon."

Gary Friedman, who chairs Jewish Prisoner Services International, said kosher meals appeal to both Jewish and non-Jewish prisoners alike. "Inmates have a lot of paranoia about what they are being fed," he stated. "If they are using prepackaged, sealed meals, the inmates believe they are safer."

However, the cost of such meals is much higher. Crews told the Senate committee that three regular meals for state prisoners cost \$1.52 per day, while only two kosher meals cost at least \$4.00 per day.

The Eleventh Circuit said such concerns were unfounded in its May 2013 ruling in Rich's appeal, holding that the state's cost estimates were "unsupported" and that purported security concerns were "speculative." Following remand, Rich voluntarily dismissed his lawsuit against the FDOC without prejudice on February 10, 2014.

An Islamic rights group, meanwhile, has said that if the FDOC is going to serve

kosher meals to Jewish prisoners then the state also needs to provide halal food for Muslim prisoners.

"It is only fair and equitable that if Jewish inmates receive kosher food, as they should, that Muslim inmates have access to halal meals," said Hassan Shibly, executive director of the Florida chapter of the Council on American-Islamic Relations, in a January 2014 press release.

"We have been trying to amicably resolve these issues for 2½ years to avoid a lawsuit but will be taking legal action within the next year if they do not comply," he stated.

The DOJ's lawsuit against the FDOC, which seeks declaratory and injunctive relief, remains pending; Florida officials have since appealed the district court's preliminary injunction order. The FDOC moved to stay the order pending resolution of the appeal, but the motion was denied. See: *United States v. Secretary, Florida Department of Corrections*, U.S.D.C. (S.D. Fla.), Case No. 1:12-cv-22958. ■

Additional sources: *Reuters*, [www.huffingtonpost.com](http://www.huffingtonpost.com), [www.voiceofrussia.com](http://www.voiceofrussia.com)



## Stamps for CASH!

*Great Goods will buy your stamps!*

**70%** of Face Value: Complete books or sheets of Forever Stamps

**65%** of Face Value: Complete books, sheets, or rolls of 45-cent stamps

**60%** of Face Value: Complete books or sheets of high denomination stamps above 45-cent

**Payment sent within 24 hours of receipt.**



**WE** WILL SEND your funds as a money order, electronic payment to anywhere you designate. Great Goods can also send payment to an approved package vendor. Please provide complete name and address of where to send your funds. Also include any required forms or special instructions.

Minimum money order of \$20. • No quantity of stamps too big. • No taped or stapled stamps. • Used, damaged, torn stamps not accepted and cannot be returned. • Stamps **MUST** be on original postal backing. • Only new stamps accepted.

• No singles or partials will be accepted and they cannot be returned.

## GREAT GOODS

PO Box 399, West Chesterfield NH 03466

[www.greatgoods.org](http://www.greatgoods.org)

STAMPS © USPS. ALL RIGHTS RESERVED.

# Ninth Circuit: County May be Liable for Wrongful Conviction Even if District Attorney Enjoys Absolute Immunity

ON MAY 8, 2013, THE NINTH Circuit Court of Appeals held that the County of Los Angeles could be held liable for its failure to establish policies regarding the use of jailhouse informants, when that failure led to the wrongful conviction of Thomas Lee Goldstein, a man with no prior criminal history, who served over two decades in prison for a murder he didn't commit.

In so holding, the Ninth Circuit reversed the district court's grant of the county's motion for judgment on the pleadings. The district court's ruling, in turn, followed a decision by the U.S. Supreme Court four years earlier, which had held that the Los Angeles County District Attorney enjoyed absolute immunity from suit based on Goldstein's claims.

Goldstein, a Marine Corps veteran and engineering student, was convicted of a 1979 murder based largely on the perjured testimony of an unreliable jailhouse informant, the aptly named Edward Fink. Although Fink had a history of testifying in other cases in exchange for reduced sentences, no one informed Goldstein's counsel of Fink's history or that Fink had lied on the stand when he denied having such a history.

In 1998, Goldstein filed a petition for habeas relief in federal court. After conducting an evidentiary hearing, the district court found the prosecution had failed to disclose impeachment material to Goldstein's defense counsel and that the error had prejudiced him. Given the option of retrying Goldstein, the state chose to release him instead. He had served 24 years.

Goldstein then filed suit against Los Angeles County and the District Attorney pursuant to 42 U.S.C. § 1983, alleging that his civil rights had been violated by their failure to create an information system containing potential impeachment material related to informants.

In *Van de Kamp v. Goldstein*, 555 U.S. 335 (2009), the U.S. Supreme Court held that the District Attorney was absolutely immune from Goldstein's claims because those claims focused on administrative procedures "directly connected with the conduct of a trial." [See: *PLN*, March 2009, p.26].

On remand, the district court entered judgment in favor of the District Attorney, then "reluctantly" granted the county's motion for judgment on the pleadings.

The Ninth Circuit reversed on appeal, rejecting the county's argument that the Supreme Court's decision in *Van de Kamp* was determinative of the outcome of the case. In so ruling, the appellate court distinguished the role of the District Attorney as a prosecutor – an agent of the state entitled to absolute immunity – from the role of the District Attorney as an administrative policymaker for the county.

Specifically, the Court of Appeals concluded that California district attorneys "act as local policymakers when adopting and implementing internal policies and procedures related to the use of jailhouse informants." Accordingly, Goldstein's claims against Los Angeles County could proceed and the case was

remanded to the district court.

The Ninth Circuit noted that its conclusion would vary "from state to state" depending on an analysis of underlying state law with respect to whether prosecutors act on behalf of the state or counties, for purposes of determining immunity.

Circuit Judge Stephen Reinhardt issued a concurring opinion in which he expounded on Edward Fink's repeated history of providing false informant testimony in exchange for reduced sentences, including in the death penalty case of Thomas Thompson, a California prisoner who was executed in 1998.

The Supreme Court denied Los Angeles County's petition for writ of certiorari, and this case remains pending before the district court with a trial date scheduled in October 2014. See: *Goldstein v. City of Long Beach*, 715 F.3d 750 (9th Cir. Cal. 2013), *cert. denied*. ■

## California: Sexually Violent Predators May be Conditionally Released from Custody Even if Homeless

by Michael Brodheim

THE CALIFORNIA COURT OF APPEAL, Third District, has held that a person committed as a sexually violent predator (SVP) may be conditionally released into the community even if he or she has no fixed residence.

In October 2010, the Placer County Superior Court determined that Tibor Karsai, who had been committed as an SVP in 1998, would pose no danger to others under outpatient supervision and treatment in the community, and that he therefore should be conditionally released. A year and a half later, despite the fact that an acceptable residence for Karsai had not been found, the court ordered his release.

Arguing that no provision of law permits an SVP to be released as a transient without a fixed residence, the District Attorney sought a writ of mandate to prevent Karsai's release. The Court of Appeal rejected that argument, however,

concluding that "nothing in the law forbids conditional release of an SVP as a transient." To hold otherwise, the appellate court wrote, would raise serious constitutional concerns.

Once a trial court determines that an SVP would not pose a danger to others – if under supervision and treatment in the community, as required by statute – the SVP "unquestionably has a significant liberty interest in being released." Delaying that release due to lack of post-release housing "would run the risk that a person who is no longer dangerous will nonetheless have to remain in custody in a secure facility indefinitely simply because of some extraneous factor, such as public outrage, that interferes with finding and securing a fixed residence for that person," the Court of Appeal wrote. See: *People v. Superior Court (Karsai)*, 213 Cal. App. 4th 774 (Cal. App. 3d Dist. 2013), *review denied*. ■

# CHEAP LOCAL FEDERAL CALLS

*Get a local Number & Save up to 85% on Prison Calls with Sentel.*

*Save on International Calls with Sentel*

Below is a summary of the Great plans we offer:

ECONOMY PLAN (USA)	MEXICO PLAN	DOMINICAN REPUBLIC PLAN	USA & INTERNATIONAL
<b>Features:</b>  Price: <b>\$14.99</b> 400 Minutes Additional lines @ \$2.0 Additional Mins @ 5cents Best up to 4lines Monthly	<b>Features:</b>  Price: <b>\$34.99</b> 300 Minutes Additional Minutes @ 12 cents Add a line for \$2.5	<b>Features:</b>  Price: <b>\$39.99</b> 300 Minutes Additional Minutes @ 12.5 cents Add a line for \$2.5	<b>Features:</b>  Price for 1 <sup>st</sup> line: <b>\$1</b> Add a line: 50 cents Rates Based Upon Destination 6cents for USA Calls as low as 10 cents for INTER Guaranteed lowest rates Great for Multiple Lines

## LLAMADAS FEDERALES LOCALES BARATAS

Obtenga un número local de la prision y ahorre hasta un 85% en llamadas con Sentel.

*Ahorre en llamadas internacionales con Sentel*

A continuación se muestra un resumen de los Grandes planes que ofrecemos:

PLAN ECONOMICO (EE.UU.)	PLAN PARA MEJICO	REPÚBLICA DOMINICANA PLAN	EE.UU. E INTERNACIONAL
<b>Incluye:</b>  Precio: <b>\$ 14.99</b> 400 Minutos líneas adicionales @ \$ 2 Minutos adicionales @ 5cents Bueno hasta 4lines mensuales	<b>Incluye:</b>  Precio: <b>\$ 34.99</b> 300 Minutos Minutos adicionales @ 12 cents Agregue una línea por solo \$ 2.5	<b>Incluye:</b>  Precio: <b>\$ 39.99</b> 300 Minutos Centavos adicionales Minutes@12.5 cents Agregar una línea por solo \$ 2.5	<b>Incluye:</b> <b>Precio para 1 ª línea: \$ 1</b> Agregue una línea: 50 cents Precios basados en la Destino 6cents para EE.UU. Las llamadas internacionales por solo 10 centavos los mejores precios garantizado Excelente para múltiples líneas

**We accept debit and credit card payments, institutional checks, bank deposits and paypal**

Sentel, Sentel  
 9550 S. Eastern Ave Ste 253  
 Las Vegas, NV 89123  
 Ph: 702-430-9445  
 Email: [sentel.nv@gmail.com](mailto:sentel.nv@gmail.com)  
 Website: [www.sentelinmatecall.com](http://www.sentelinmatecall.com)

**Note : Please do not send any inquiries by mail. Mail is only for orders and payments.**

# **Banking and Financial Management Course (1<sup>st</sup> Ed.), by Prisoner Assistant**

**(CreateSpace Independent Publishing, July 2013). 119 pages, \$30.00**

*Book review by Gary Hunter*

**L**IFE OUTSIDE PRISON CROSSES THE minds of most prisoners daily, but how many times do those thoughts include the direction of their financial future? Prisoner Assistant has put together a helpful text book, the *Banking and Financial Management Course*, specifically designed to help prisoners understand and plan for their future finances.

*Banking and Financial Management* offers a detailed description of how financial institutions operate and how they can be successfully used. The reader will learn the subtle differences between a debit card, credit card and ATM card, for example. The book also describes a number of fee-based financial services offered by Prisoner Assistant.

Chapter one addresses banking basics with a concise explanation of what financial institutions offer and how they work. Debit card and credit card functions are clearly explained. Prisoner Assistant even provides a list of questions that will help you find the financial institution best suited to your personal needs.

Chapter two examines savings accounts, and illustrations take the reader through an easy to understand, step-by-step process. Technological advances now offer everyone a variety of ways to access their funds once they are deposited in a financial institution.

Debit cards and online banking save people time and money when it comes to shopping and paying bills. *Banking*

and *Financial Management* explains these options and the good and bad points of each. It also discusses how to reverse the effects of a negative credit history that may disqualify you from doing business at certain banks.

Chapter three covers checking accounts, which have changed dramatically over the years. While people still use paper checks, money is more often managed with debit cards. A debit card allows the card holder to shop, pay bills or get cash without the hassle of writing a check, though there are also disadvantages.

Automatic Teller Machines (ATMs) are everywhere; they are the bank's way of making it easy for you to access the money in your account. But convenience is seldom free, even when the money belongs to you, and Prisoner Assistant's detailed book describes the hidden costs of accessing your money through ATMs.

Further, *Banking and Financial Management* will teach you how to read bank statements, perform online banking transactions and manage checking accounts to avoid penalties that result from overdrafts.

Because almost 85% of identity theft occurs through the theft of paper documents, banks now offer their customers the security of online banking services. Online banking also allows the convenience of 24/7 access to your money and lets you view, print and download bank statements anywhere.

Mobile banking – i.e., banking from

your phone – is another option. Prisoner Assistant informs the reader about mobile banking services and other ways you can manage your finances in today's technologically-advanced world.


Chapter five is arguably the most important chapter, as it teaches the fundamentals of how to budget your money. *Banking and Financial Management* breaks down budgeting into three fundamental steps: establishing a budget, using your budget and creating an emergency fund.

Basic budgeting consists of balancing income and expenses, and Prisoner Assistant explains budget basics with complete instructions whether you prefer to use pencil and paper or computer spreadsheets. *Banking and Financial Management* will help you understand the differences between fixed and variable expenses, for example.

Credit cards and credit history can make or break your plans for financial success. In chapter six, Prisoner Assistant covers the importance of credit, how to qualify for credit and how not to get caught in traps that can ruin your credit rating. You will learn about credit reports, credit scores and how to build a strong credit history.

Chapter seven covers loans, while chapter eight addresses credit cards. Both discuss how to avoid paying high interest rates; different types of interest and interest rates play a major role in determining what kinds of loans and credit cards are best for you.

For the reasonable price of \$30.00, this highly informative text, complete with illustrations and end-of-chapter exams, can help prisoners learn how to manage their money and achieve financial success. In addition to this book, Prisoner Assistant offers a variety of fee-based services to assist prisoners in preparing for their financial future while incarcerated, such as opening accounts and building a credit history.

The *Banking and Financial Management Course* is available from Prisoner Assistant ([www.prisonerassistant.com](http://www.prisonerassistant.com)), or from online booksellers such as Amazon. 



[chiang-lin.com](http://chiang-lin.com)

## **Law Office of TIMOTHY C. CHIANG-LIN, PLLC**

Representing Individuals Sexually Abused  
in Washington State's Foster Care, Group Home,  
City, County Jail and Prison

**2155 112th Ave NE, Bellevue, WA 98004**

**[tim@chiang-lin.com](mailto:tim@chiang-lin.com)**



# WELCOME TO KRASNIA BABES & KRASNIA STUDS WORLD

TENS OF THOUSANDS OF THE HOTTEST AND MOST SCANDALOUS BABES&DUDES FOUND ON THE PLANET.  
EACH CATALOG PAGE HAS 120 BEAUTIFUL GIRLS OR BOYS POSING JUST FOR YOU!  
ORDER ONE CATALOG PAGE FOR ONLY \$4.50 OR FOR 10 U.S. FOREVER STAMPS WITH AN SASE ENCLOSED.  
WE WILL SEND YOU VOLUME ONE. EACH ADDITIONAL VOLUME THE SAME PRICE!

## HELP US TO HELP YOU!

WE ARE MORE THAN HAPPY TO ANSWER E-MAIL INQUIRES HOWEVER, DUE TO MAILING COST AT \$0.46 CENTS  
A LETTER, PLEASE ENCLOSE AN SASE WITH YOUR QUESTIONS, OTHERWISE NO REPLIES!

## WHAT ABOUT OUR PRICES AND POLICIES

COLOR PRINTS ON 4x6 GLOSSY PHOTO PAPER AS LOW AS \$0.35 CENTS PER PRINT ON ORDERS OVER 500  
SHIPPED ACCORDING TO POLICY: 25 PICTURES PER ENVELOPE EVERY 24 HOURS. S&H \$2.00 PER ENVELOPE.

## METHOD OF PAYMENT/CONTACT INFORMATION

U.S. POSTAL SERVICE MONEY ORDERS-STATE & FEDERAL CORRECTIONAL INSTITUTIONAL CHECKS

PAYABLE ONLY TO: KRASNIA L.L.C.

EQUATION FOR FIRST CLASS U.S. FOREVER STAMPS

BRAND NEW FLAT BOOK FOR ALL ORDERS AT THE RATE OF \$6.00 PER FLAT BOOK.

WE RESPOND TO OUR CLIENTS NEEDS AND TRY TO HELP THE BEST WE CAN.

OUR SEASONAL SPECIALS MEAN A KICKOFF OF SAVINGS!

### COLOR CATALOG DISCOUNT SALE ONE COLOR CATALOG OF 120 BABES IN CLASSIC OR NUDE LINES \$4.50

PLEASE INCLUDE

A SELF-ADDRESSED STAMPED

(2-FIRST CLASS STAMPS) ENVELOPE.

QUANTITY BUYS:

5-14 CATALOGS =10% OFF OUR REGULAR PRICE  
15 CATALOGS =15% OFF OUR REGULAR PRICE  
20 CATALOGS =20% OFF OUR REGULAR PRICE  
25 CATALOGS =25% OFF OUR REGULAR PRICE  
30 CATALOGS =30% OFF OUR REGULAR PRICE  
35 CATALOGS =35% OFF OUR REGULAR PRICE  
40 CATALOGS =40% OFF OUR REGULAR PRICE  
45 CATALOGS =45% OFF OUR REGULAR PRICE  
50 CATALOGS =50% OFF OUR REGULAR PRICE  
BE SURE TO SPECIFY CLASSIC OR NUDE BABES!

150 VOL. OF KRASNIA BABES CLASSIC LINE  
150 VOLUMES OF KRASNIA BABES NUDE LINE

**\$24.95 S&H FREE**  
**FOR GRAB BAG OF**  
**50 PHOTOS**  
**FROM ALL OUR CATALOGS**  
**SPECIFY RACE AND MAIN**  
**AREA OF YOUR INTERESTS**  
**WE WILL PICK SELECTION**  
**FOR YOU**  
**BONUS 1 COLOR CATALOG**  
**PAGE OF 120 BABES**

### LOOSE STAMPS FOR LOOSE BABES

KRASNIA LOOSE STAMP GRAB BAG SPECIAL

10 LOOSE BABES.....30 STAMPS  
25 LOOSE BABES.....75 STAMPS  
50 LOOSE BABES.....150 STAMPS

ALL STAMPS MUST BE 1ST CLASS STAMPS

IN LIKE NEW CONDITION!

SPECIFY NUDE OR BOP-SAFE (NO VISIBLE NUDITY)

WE WILL PICK SELECTION FOR YOU

### KRASNIA BABES HAS SPRUNG SALE!

FREE SAMPLE CATALOG FROM KRASNIA!

120 BABES IN EACH CATALOG

ENCLOSE ONE SASE WITH TWO FIRST

CLASS STAMPS! 1 CAT PER CUSTOMER

PLEASE SPECIFY MALE OR FEMALE BABES

NUDE OR BOP-FRIENDLY

WE'D LIKE TO START THE HOLIDAYS RIGHT THIS YEAR!

THE WAY TO DO THAT IS BY SENDING YOU INCREDIBLE VALUES

IT'S ONE THING TO TALK THE TALK, ANOTHER TO WALK THE TALK

50 GREAT BABES 0.50 CENTS EACH!—\$25.00  
100 GREAT BABES 0.45 CENTS EACH!—\$45.00  
200 GREAT BABES 0.40 CENTS EACH!—\$80.00  
300 GREAT BABES 0.40 CENTS EACH!—\$120.00  
500 GREAT BABES 0.35 CENTS EACH!—\$175.00

STANDARD TERMS & CONDITIONS APPLY – \$2.00  
PER ENVELOPE (25 PHOTO) FOR SHIPPING AND HANDLING!

WAIT!

YOU SAY YOU DON'T HAVE ENOUGH BABE CHOICES

OR CATALOGS? YOU NEED CATALOGS?

PREPAY YOUR ORDER AND WE WILL SEND YOU

FREE COLOR CATALOGS!

GREAT DEAL, BUT HOW MANY CATALOGS?

FOR EVERY 100 BABES WE'LL SEND YOU  
240 BABES TO CHOOSE FROM!

ORDER

50 BABES.....ONE SINGLE CATALOG  
100 BABES.....ONE DOUBLE CATALOG  
200 BABES.....TWO DOUBLE CATALOGS  
300 BABES.....THREE DOUBLE CATALOGS  
500 BABES.....FIVE DOUBLE CATALOGS

3 BRAND NEW FLAT BOOKS OF FOREVER  
STAMPS FOR GRAB BAG OF 45 PHOTOS  
FROM ALL OUR CATALOGS. SPECIFY RACE  
AND MAIN AREA OF YOUR INTERESTS  
WE WILL PICK SELECTION FOR YOU  
BONUS 1 COLOR CATALOG OF 120 BABES  
PLEASE INCLUDE 6 FOREVER STAMPS  
WITH YOUR ORDER FOR S&H

KRASNIA L.L.C.

P.O. BOX 32082

BALTIMORE, MD 21282

EMAIL AND CORRLINKS REQUESTS ACCEPTED AT:

KRASNYABABES@HOTMAIL.COM

KRASNIA IS PROUD TO INTRODUCE AT FANTASTIC INTRODUCTORY PRICES

THE CONNOISSEUR'S COUTURE "CACHE TWO-FIVE COLLECTION"  
OF INTERNATIONAL ADULT FILM STARS

TWELVE PACKAGES OF 25 NUDE AND NON-NUDE POSES,

AVAILABLE ONLY IN OUR "CACHE TWO-FIVE" COLLECTION.

"CACHE TWO-FIVE"

"CACHE TWO-FIVE" IS AVAILABLE IN TWELVE (12) SPECIALLY PRICED PACKAGES  
OF 25 POSES IN NUDE AND NON-NUDE POSES.

PLEASE SPECIFY ON YOUR ORDERS IF YOU WANT NUDE OR NON-NUDE PACKAGES  
AND WHAT COLLECTION NUMBER YOU'D LIKE.

COLLECTIONS ARE NUMBERED 01-12 FOR EXAMPLE ON YOUR ORDER YOU'D WRITE:

\*\*\*NUDE CACHE TWO-FIVE PACKAGE 01 & 02\*\*\*

REMEMBER THERE ARE TWELVE (12) COMPLETELY DIFFERENT PACKAGES OF 25 BABES,

THERE ARE NO DUPLICATES IN ANY OF THE 12 PACKAGES.

600 BEGUILING BEAUTIES, ALL BRAND NEW ADDITIONS TO OUR LINE AND AVAILABLE ONLY

IN OUR CACHE "TWO-FIVE" PACKAGES! 300 NUDES AND 300 NON-NUDE BEAUTIES

CAPTURE YOUR OWN COLLECTION OF KRASNIA'S "CACHE TWO-FIVE" SELECTIONS IN

INDIVIDUALIZED PACKAGING OF 25 RARE AND EXQUISITE BREATH-TAKING BEAUTIES.

THE CONNOISSEUR'S COUTURE COLLECTION OF "CACHE TWO-FIVE" BRINGS YOU

25 BEAUTIES IN EACH "CACHE TWO-FIVE" PACKAGE FOR ONLY \$12.95 PER PACKAGE

LIMITED TIME SPECIAL \*\*\*\*\* \$59.95\*\*\*\*\*

PLUS S&H FOR 6 "CACHE TWO-FIVE" PACKAGES OF THE NUDE OR NON-NUDE COLLECTIONS

150 BEAUTIES

IMAGINE 150 OF THESE EXCITING AND EXQUISITE BEAUTIES

FOR A RIDICULOUSLY LOW PRICE OF

\*\*\*\*\*\$59.95\*\*\*\*\* PLUS \$12.00 SHIPPING AND HANDLING CHARGE.

ADD \$2.00 FOR SHIPPING AND HANDLING PER "CACHE TWO-FIVE" PACKAGE ORDERED.

YOU MUST SPECIFY NUDE OR NON-NUDE PACKAGES

IF NOT SPECIFIED NON-NUDE WILL BE SHIPPED AUTOMATICALLY

ALL OF OUR NORMAL POLICIES APPLY

FOR KRASNIA CLIENTS WHO WORK THE YARDS;

HAVE WE GOT A GREAT OPPORTUNITY FOR YOU...GRAB BAG

### MR. HUSTLE GRAB BAG BARGAIN DAYS

ONLY \$0.25 CENTS PER BABE

5 GRAB BAG MINIMUM PURCHASE REQUIRED

\$2.00 SHIPPING AND HANDLING PER BAG

25 AWESOME BABES PER BAG AT ONLY \$6.25 PER BAG

YOU MUST BUY AT LEAST 5 GRAB BAGS OR 50 GRAB BAGS.

THIS\*\*\*GRAB BAG BARGAIN\*\*\* IS NOT GOING TO BE OFFERED

AGAIN THIS YEAR. **SO STOCK UP NOW!**

AS YOU KNOW YOU GET AN ARRAY OF 25 GORGEOUS BABES

YOU CAN ONLY CHOOSE EITHER MALES OR FEMALES,

ALL NUDES OR BOP SAFE...THE INDIVIDUAL SELECTIONS COME

FROM OUR BEST CATALOGS!!!

YOU MAY WANT TO SIT DOWN FOR THIS BONUS BARGAIN!

OUR BABES CATALOGS SPECIAL OF THE DECADE

— 5 COLOR CATALOGS FOR \$6.00 —

— 10 COLOR CATALOGS FOR \$12.00 —

— 15 COLOR CATALOGS FOR \$18.00 —

— 20 COLOR CATALOGS FOR \$24.00 —

OUR CATALOGS SPECIAL AVAILABLE WHEN YOU PURCHASE

THE 5 GRAB BAG MINIMUM!

THIS PRICE INCLUDES FREE SHIPPING ON THE CATALOGS

BECAUSE OF SHIPPING TERMS ALL CATALOGS SOLD IN

MULTIPLES OF 5 FOR \$6.00 ONLY.

YOU CHOOSE EITHER MALE OR FEMALE CATALOGS

AND IF YOU WANT NUDE OR BOP SAFE!!

# Seventh Circuit Clarifies Standard for Recruiting Counsel in Pro Se Cases

by David Reutter

**T**HE SEVENTH CIRCUIT COURT OF Appeals has held that an Illinois federal district court, like many federal courts in Northern Illinois, used an improper standard when refusing to exercise its discretion to recruit counsel for a pro se prisoner in a civil rights action. The appellate court further found the prisoner was prejudiced by the refusal to recruit counsel.

While at the Stateville Correctional Center in 2008, prisoner Eduardo Navejar was ordered out of the cafeteria line by Lt. Akinola Iyiola for violating prison rules that prohibit prisoners being transported from stopping to speak to other prisoners. Navejar disobeyed the order, became belligerent and punched Iyiola in the face.

Iyiola and other guards wrestled Navejar to the ground and handcuffed him. From that point on, the facts were disputed. Navejar testified that Iyiola kicked him in the forehead near his eye and an unidentified guard stomped his head against the ground. Navejar was then pepper-sprayed by Sgt. Michael Grant.

After Navejar was dragged along the floor and carried down some stairs, Iyiola again pepper-sprayed him. Guards then left Navejar in a segregation cell for a half-hour, screaming in pain, before allowing him to wash off the pepper spray.

The next morning Navejar was in the medical unit awaiting examination when Lt. Glen Elbersen removed him and told him that he was being transferred to the Pontiac Correctional Center. A doctor later concluded, after administering X-rays, that Navejar suffered only bruises and scratches.

Navejar was found guilty of four disciplinary charges stemming from the incident; his appeal and grievance claiming excessive force were denied. He then sued Iyiola, Grant, Elbersen and other unnamed guards. The district court ignored two motions filed by Navejar seeking pro-bono counsel, and denied two similar motions. The court then granted summary judgment to the defendants.

On appeal, the Seventh Circuit found the district court's denial of Navejar's motions was based on a legal standard that preceded its en banc ruling in *Pruitt v. Mote*, 503 F.3d 647 (7th Cir. 2007), which refined the standards for evaluating whether to recruit counsel. Under *Pruitt*, if a plaintiff makes a reasonable attempt to secure an attorney, the district court must examine "whether the difficulty of the case – factually and legally – exceeds the particular plaintiff's capacity as a lay person to coherently present it."

The inquiry does not focus, as the

district court had held, solely on the plaintiff's ability to try the case; it also includes other tasks that "normally attend litigation," such as "evidence gathering" and "preparing and responding to motions." Further, the district court improperly considered whether recruiting counsel would affect the case's outcome. That inquiry, the Court of Appeals held, "is reserved for the appellate court's review for prejudice." The Seventh Circuit found more than 100 cases from the Northern District of Illinois that had improperly relied on pre-*Pruitt* case law.

Finally, the appellate court held that Navejar was prejudiced as a result of the district court's refusal to recruit counsel, because counsel would have responded to the defendants' arguments that the district court should disregard Navejar's "self-serving evidence" and that his excessive force claims were barred by *Heck v. Humphrey*, 512 U.S. 477 (1984). Both arguments, which were accepted by the district court, constituted "substantive errors."

Accordingly, the case was reversed and remanded for further proceedings. See: *Navejar v. Iyiola*, 718 F.3d 692 (7th Cir. 2013). Following remand the district court appointed counsel to represent Navejar, and the parties entered into settlement discussions in April 2014. ■

## CALIFORNIA LIFER NEWSLETTER

**Published by Life Support Alliance**

CLN: Comprehensive newsletter mailed every 8 weeks containing state and federal cases, parole board news, statistics, legislation and articles of interest to Lifers and their supporters.

### CLN SUBSCRIPTIONS

Prisoners .... \$30 per year (or 100 stamps)  
Others .... \$90 per year

**Make checks payable to LSAEF**

(Life Support Alliance Education Fund)

**CLN, P.O. Box 277, Rancho Cordova, CA. 95741**

*CLN no longer provides copy service of legal cases, articles or news and materials from the Internet.*

[www.lifesupportalliance.org](http://www.lifesupportalliance.org) (916) 402-3750

**Incarcerated  
Entrepreneur  
Freight Agent  
Training Course  
12 Module Training  
course takes you**

**through everything you will need to  
graduate and be a certified freight agent  
moving freight for commission.**

**Toll Free 1-877-238-9185**

**S.A.S.E. For more information To:**

**Lone Wolf Institute**

**1015 Townsend Dr. Pochahontas, AR 72455**

**Payment plans available from \$25.00**

**[lonewolfarkansas@gmail.com](mailto:lonewolfarkansas@gmail.com)**



# Second Circuit: Federal Prisoner States Conditions of Confinement Claim

by David Reutter

**T**HE COURT OF APPEALS FOR THE Second Circuit held that a federal prisoner sufficiently stated a claim alleging the conditions of his confinement violated the Eighth Amendment.

The case involved an appeal from a New York federal district court's order granting a motion to dismiss filed by defendant prison officials. The district court held that FCI Ray Brook prisoner Ellis Walker had failed to present facts to support his claim that conditions at the facility constituted cruel and unusual punishment.

Walker alleged that for 28 months he was held in a cell with five other men. The cell had "inadequate space and ventilation, stifling heat in the summer and freezing cold in the winter," unsanitary conditions that included urine and feces splattered on the floor, insufficient cleaning supplies and a mattress too narrow for him to lie down on flat. Walker also claimed the cell was noisy and crowded, which made sleep difficult, and that he was at constant risk of violence and serious harm from his cellmates.

The Second Circuit held that those allegations plausibly stated a claim for cruel and unusual punishment. First, the appellate court said it was well settled that exposing prisoners to extreme temperatures without adequate ventilation may constitute a constitutional violation.

Next, the Court of Appeals noted that sleep is critical to human existence, and conditions which prevent sleep have been held to violate the Eighth Amendment. "Further,

at least one court recently found that the condition of a prisoner's mattress may be so inadequate as to constitute an unconstitutional violation," the appellate court wrote.

Third, it has long been recognized that unsanitary conditions in a prison cell, under egregious circumstances, can rise to the level of cruel and unusual punishment. Such conditions lasting for "mere days" could reach that level.

The failure to provide prisoners with toiletries and other hygiene supplies also can be unconstitutional, as can conditions that place prisoners at a "substantial risk of harm." The Court of Appeals found that Walker had pled sufficient facts to defeat a motion to dismiss, which treats all factual allegations as true, by plausibly alleging "conditions that, perhaps alone and certainly in combination, deprived him of a minimal civilized measure of life's necessities."

The Second Circuit held the district

court had improperly "assay[ed] the weight of the evidence" and had erred in finding that Walker, who was proceeding pro se, was required to indicate "the exact extent or duration of [his] exposure to unsanitary conditions" and the temperatures in his cell. It had also erred in dismissing Walker's overcrowding claim by finding the 29 square feet allotted to each prisoner in his six-man cell had been judicially sanctioned in other cases.

The Court of Appeals concluded that Walker was entitled to develop a factual record to support his claims, and that he had adequately alleged the defendants knew about and disregarded the excessive risks to his health and safety at FCI Ray Brook. The Second Circuit declined to address the defendants' argument that they were entitled to qualified immunity. The district court's order of dismissal was vacated and the case remanded for further proceedings, where it remains pending. See: *Walker v. Schult*, 717 F.3d 119 (2d Cir. 2013). ■

## Pen Pals for Prisoners

Your ad on the Internet worldwide:

One year for \$9.95. Mail name &

address for FREE order form or online:

[www.PrisonerPal.com](http://www.PrisonerPal.com)

PO Box 19689

Houston, TX 77224

## LET US HELP GET YOU HOME!

D&D Worldwide Services LLC, is an Inmate Service Provider. We create detailed parole plans and provide parole plan documentation services worldwide. We are a team of Christian Professional Consultants with over 14 years' experience with the prison system. Our services are intended to guide Pro-Se Clients in the "Right Direction" while assisting them during the parole review process. When building your case, we focus on showing the Parole Board a real person, the positive outcome of incarceration, and you to be a favorable candidate for the privilege of parole!

**Full Service (Texas Only)** - Our office will collaborate the details of your case, create into a personalized parole plan with an Interview Request. We will also provide you with the updates of the major occurrences of your file when in review. Services are provided UNTIL an approval is granted or you are released from prison. Effective March 1, 2014 Service fee is \$800.00

**Standard Service (Worldwide)** - Our standard parole plan is approved in ALL STATES where parole is available. Our office will verify your supporters, build your support system, and create into a personalized standard parole plan. Send SASE for a processing form. Effective March 1, 2014 Service fee is \$200.00

*Although the Prison system may only see Prison Numbers...*

*We see "Faces" with "Names" with "Loving families" - "We See People"!*

### D&D Worldwide Services, LLC

12337 Jones Rd # 408 Houston, TX 77070

P.O. Box 40081; Houston, TX 77240

Office: (281) 580-8844; Website: [www.myparole.info](http://www.myparole.info)

***Se Habla Español.***

# Witness Protection Program Termination Unreviewable; 188 Days in SHU Triggers Due Process Protections

by Mark Wilson

THE SECOND CIRCUIT COURT OF APPEALS has held that claims related to termination from a federal witness protection program are not judicially reviewable. The Court reinstated an administrative segregation claim, however, holding that 188 days in segregation triggered due process protections.

A federal prisoner incarcerated at FCI Otisville in New York, identified only as "J.S.," voluntarily participated in the U.S. Department of Justice's (DOJ) Witness Security Program, also known as the witness protection program, from December 2007 to March 2010 pursuant to a "prisoner-witness agreement" and a memorandum of understanding with the DOJ.

Upon entering the program, J.S. agreed that contacting or attempting to contact unauthorized individuals could result in his termination from the program.

In October 2009, DOJ officials in-

formed J.S. that he had violated the agreement by contacting unauthorized individuals, and a program termination notice was issued.

J.S. administratively appealed the termination, arguing that the DOJ's failure to provide him with notice of whom he allegedly contacted deprived him of due process. He also claimed the alleged violation was impossible because prison staff approved all of his contacts.

On April 19, 2010, prison unit manager Donna Hill served J.S. with a copy of the DOJ order denying his appeal. The DOJ "doesn't have to go by the same rules as everybody else," Hill said when J.S. again objected to the lack of notice regarding whom he had allegedly contacted. "They don't have to tell you what you did, you know what you did."

Hill instructed J.S. to initial the order. After he did so, he was immediately confined in the prison's Security Housing Unit (SHU) for 188 days.

J.S. filed a *Bivens* action alleging that his witness protection program termination and SHU confinement were unconstitutional. The district court dismissed the action sua sponte, holding that it lacked

subject-matter jurisdiction because 18 U.S.C. § 3521(f) states that witness protection program termination decisions "shall not be subject to judicial review."

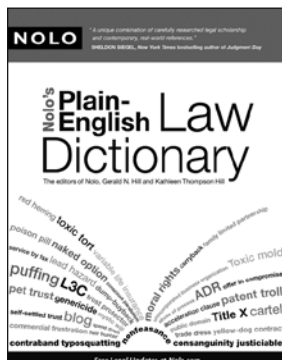
The Second Circuit upheld the dismissal of the termination claim, agreeing that § 3521(f) bars judicial review of such termination decisions and Congress did not create a property interest in participation in the witness protection program. In the latter regard, J.S. was "unable to show that he has been deprived of a property right for which process is due because a benefit is not a protected entitlement if government officials may grant or deny it in their discretion."

The appellate court reversed the dismissal of J.S.'s SHU claim, however, concluding with "little difficulty" that "188 days of administrative confinement is sufficient to implicate *Sandin*-type liberty interests," referring to the due process standard set forth in *Sandin v. Conner*, 115 S.Ct. 2293 (1995) [*PLN*, Aug. 1995, p.1]. The Court of Appeals also found that J.S. should be allowed on remand to replead his claim, not included in his original complaint, "that his confinement [in the SHU] was not merely administrative but was punitive because it was intended to punish his breach of the Program agreement...."

In a concurring opinion, two Second Circuit judges made "the troubling observation that Congress has created procedural guarantees for Witness Security Program ... participants which when violated, as they appear to have been here, give rise to no judicial remedy." They expressed hope "that Congress may choose to review and audit compliance with, or even revise, 18 U.S.C. § 3521 to provide greater enforcement of the procedural protections it intended Program participants to have." The dissenting judges also directed the court clerk to send a copy of the opinion to the DOJ's Office of the Inspector General for review.

The case was remanded so J.S. could replead his SHU claim, while the dismissal of the program termination claim was affirmed. See: *J.S. v. T'Kach*, 714 F.3d 99 (2d Cir. 2013). ■

 **NOLO**



## Nolo's Plain-English Law Dictionary

\$29.99

Order from

### Prison Legal News

P.O. Box 1151

Lake Worth, FL 33460

561-360-2523

Add \$6 shipping for orders under \$50

[www.prisonlegalnews.org](http://www.prisonlegalnews.org)



**INMATE**  
CONNECTIONS.com

92% Response Rate in 2013!

50,000 Hits Daily!

A+ Rating with the Better Business Bureau!  
Facility and personal checks, credit cards, stamps,  
& Moneygram payments accepted!

Write for a free brochure/application:  
**CONPALS@INMATECONNECTIONS.COM** LLC  
465 NE 181st Ave. #308 Dept. PLN  
Portland, OR 97230-6660

Email inquiries and Federal Corrlinks users:  
[info@convictpenpals.com](mailto:info@convictpenpals.com)

Since 2002



## Former Colorado DOC Official Pleads Guilty to Felony Menacing Charges

**E**X-COLORADO PRISON OFFICIAL MARK Edward McKinna, 63, pleaded guilty in May 2013 to six counts of felony menacing with a deadly weapon.

McKinna, once a regional director for the Colorado Department of Corrections who served as warden at the Fremont, Limon and Territorial correctional facilities, admitted discharging a firearm at six people – five of them children – near a neighbor's home in Cañon City.

The incident occurred when Charlene Cornwell's then-14-year-old daughter and another girl were outside riding the family's go-kart. According to a probable cause affidavit, McKinna exited his house and began cursing at them due to the noise.

He reportedly continued using profanity at Cornwell, the two girls and three other children even after they turned off the go-kart. McKinna then pulled a gun from his pocket and fired a shot in their direction.

Cañon City police responded to the August 2012 incident and one officer testified that he smelled alcohol on McKinna, who had slurred speech, watery eyes and was off-balance.

McKinna accepted a plea bargain

and was sentenced to 10 days in jail and three years' probation on July 17, 2013. While on probation he will not be allowed to possess firearms, other deadly weapons, alcohol or non-prescription drugs. Further, he must write an apology to each of the victims, obtain a mental health evaluation and stay away from the Cornwell family.

The state court rejected the prosecution's request for an 18-month sentence, citing McKinna's "exemplary" character and career as a prison official. McKinna's defense attorney said the sentence was a reasonable outcome. ■

Sources: [www.canoncitydailyrecord.com](http://www.canoncitydailyrecord.com), [www.chieftain.com](http://www.chieftain.com)



**Inmate Email News & Services**

While all the other services out there offer separate packages for individual rates, "For The Scoop" gives it all to you for one low monthly rate!!! "For the Scoop" gives you Everything you've asked for; updates in the changes of the laws and bills that affect you, broken down in our segment "What this Really Means", Plus Weekend TV Schedule, Photo Service, Sports Lines, Entertainment, US and World News, Horoscope, Stocks and Business News, plus if there is something you are interested in, just send me an email and we will do all we can to keep you in the loop. [INFO@FORTHESCOOP.COM](mailto:INFO@FORTHESCOOP.COM)

"For the Scoop" on everything important to you, All you need to do is subscribe today our rate is \$5.00 per month, with \$20.00 minimum to open an account. Most searches are \$2.00. Custom searches are available. You may mail payment from your Inmate Trust Account or have a friend or a family member visit our website with a credit or debit card or mail a money order to our P.O. Box. [Info@forthescoop.com](mailto:Info@forthescoop.com) THAT IS RIGHT, Only \$5.00 a month for ALL OF OUR SERVICES FOR \$5.00 A MONTH

**FOR THE SCOOP**

**P.O. BOX 90594**

**SAN ANTONIO, TEXAS 78209**

**[INFO@FORTHESCOOP.COM](mailto:INFO@FORTHESCOOP.COM)**

We offer around the clock service 24 hours a day 7 days a week. Requests are within 24 hours once an account is established and email set up. Institutional, RRC, and informational contact legal searches are strictly monitored. Business searches are general and as detailed as possible with contact information. Searches on individuals are prohibited. We follow BOP Rules and Regulations with our services.

Inmates across the country have questions and "For The Scoop" has answers!

Popular Inmate Searches: Federal Prisons/ Federal RRC's (Halfway Houses)/ Federal Court Houses/ Federal District Courts/ Federal District Clerks/ US Probation Offices State & County Court Houses/ Vital Statistics (birth, death records)/ Unclaimed Money State & County Clerks/ Child Support Offices/ State Probation & Parole Offices Department of Motor Vehicles/ Social Security Offices/ Employment Agencies Power of Attorney Forms/ Commissary Lists/ Ancestral Background

### Flipping Your Habe

*Overturning Your State  
Conviction in Federal Court  
Under 28 U.S.C. 2254*

© 2014 Ivan Denison

336 pages, 8 1/2 x 11 soft cover,

**\$34.95 at Amazon.com**

Instructions, forms, sample filings,  
rules, over 400 case cites.

From US District Court to  
US Supreme Court.

# Warden Granted Qualified Immunity for Two-year Visitation Suspension

by David Reutter

**A** PRISON OFFICIAL WHO SUSPENDED A prisoner's visitation privileges was entitled to qualified immunity because, under the facts of the case, the prisoner did not have a clearly established right to visitation, the Fourth Circuit Court of Appeals held.

South Carolina state prisoner Jerome A. Williams received a visitor at the Evans Correctional Institution on March 31, 2007. During the visit, a guard observed the visitor "pass suspected marijuana to Williams," who reportedly placed it in his pants before walking to the restroom.

Several guards intercepted Williams. He was taken to an area to be strip searched while his visitor was escorted out of the prison. No contraband was found, but a guard said he saw Williams put something in his mouth and swallow. As a result, Williams was placed in a "dry cell" for 72 hours. His excrement was searched for the suspected marijuana, without success. He was not charged with a disciplinary offense.

Despite the lack of contraband, Williams was held in a disciplinary "special housing unit" for a little over two months. Additionally, the warden suspended Williams' visitation privileges for two years based on the guard's observations. The visitation privileges of Williams' visitor were suspended for two years, too, but that was not at issue in the case.

Williams filed a civil rights action in December 2008 that alleged several constitutional violations. The district court granted summary judgment to the defendants on his visitation suspension claim, which was one of the claims at issue before the Fourth Circuit (other claims went to a jury trial, which found in favor of the defendants).

The appellate court noted that Williams had failed to cite any cases clearly establishing a constitutional right to visitation grounded in the First, Fourth or Fourteenth Amendments. Thus, "We conclude that the prison warden who imposed the [visitation suspension] is shielded by qualified immunity from the inmate's claim for monetary damages because, under the facts presented here, the inmate did not have a clearly established constitutional right to visitation."

The Fourth Circuit noted that in *Overton v. Bazzetta*, 539 U.S. 126 (2003) [PLN, Oct. 2003, p.18], the U.S. Supreme Court had rejected a prisoner's claim that a two-year visitation suspension constituted cruel and unusual punishment. The Supreme Court did, however, acknowledge that an Eighth Amendment analysis might differ if visitation privileges were denied permanently "or for a 'much longer period,' or 'in an arbitrary manner to a particular inmate.'"

The appellate court also found that Williams' complaint failed to state a de-

claratory judgment claim challenging the visitation suspension policy, and since his visitation privileges had since been restored he was not entitled to injunctive relief. The Court of Appeals further held the case did not fall within the narrow exception to the mootness doctrine.

The district court's summary judgment order was therefore affirmed; Williams petitioned the Supreme Court for a writ of certiorari, which was denied on February 24, 2014. See: *Williams v. Ozmint*, 716 F.3d 801 (4th Cir. 2013), *cert. denied*. ■

## Massachusetts: Order Relieving Sex Offender of Registration Not Vacated Upon Probation Violation

by David Reutter

**T**HE MASSACHUSETTS SUPREME JUDICIAL Court has held that once a judge relieves a sex offender of the requirement to register, a different judge lacks the authority to order the offender to register following a probation violation.

Douglas Ventura pleaded guilty to one count of possession of child pornography. After being sentenced to probation, pursuant to state law he moved to be relieved of the statutory requirement to register as a sex offender. The sentencing judge found that Ventura had demonstrated he did not pose a risk of re-offense or a danger to the public, and relieved him of the registration requirement.

About two-and-a-half years later, in September 2010, Ventura was charged with accosting and annoying a person of the opposite sex. At his probation revocation hearing, it was established that Ventura had watched two of his daughters' friends through a hole in the shower wall of his home's guest bathroom, which they used when they stayed at his house during overnight visits.

Ventura's probation was revoked and he was sentenced to one year in prison and three years of probation on the new charge. As part of the sentence, the judge ordered him to register as a sex offender.

On appeal, the Supreme Judicial Court

said the original charge of possession of child pornography qualified as a sex offense, but the charge of accosting and annoying a person of the opposite sex did not. Registration is a collateral consequence for convicted sex offenders; however, "Nothing in the act confers authority on a judge to impose an obligation to register as a condition of probation."

The Court held the Sex Offender Registry Act allows a judge in certain circumstances to relieve a sex offender from the registration requirement, but does not permit a judge to order such registration. "It follows that the second judge may not, as part of the sentence imposed following probation revocation, impose a registration requirement as a condition of the probationary portion of that sentence."

The Supreme Court rejected the state's position that upon a violation of probation the prior order relieving Ventura of the registration requirement was vacated. Simply put, the Court found there was no statutory support for that position, saying the state's "strained parsing of the statutory text" was "untenable." Thus, the trial court's order requiring Ventura to register as a sex offender was reversed. See: *Commonwealth v. Ventura*, 465 Mass. 202, 987 N.E.2d 1266 (Mass. 2013). ■

## NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT CONCERNING CENSORSHIP OF MATERIALS MAILED TO INDIVIDUALS IN THE CUSTODY OF THE MISSOURI DEPARTMENT OF CORRECTIONS

This notice gives information about the settlement of a lawsuit challenging how the Missouri Department of Corrections censors material that is mailed to individuals who are in its custody.

### BACKGROUND

In August 2012, a lawsuit, *Lane d/b/a Caged Potential v. Lombardi*, No. 12-4219, was brought claiming that the Missouri Department of Corrections was not giving notice of censorship decisions and an opportunity to appeal to senders of material mailed to individuals in its custody. The lawsuit claims that failing to provide senders of censored materials notice of censorship and non-delivery and failing to provide an opportunity to appeal censorship decisions violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

In November 2012, the court certified the case as a class action.

The parties have now agreed to a settlement in the case, which must be approved by the court.

### PROPOSED SETTLEMENT

You can see the entire proposed settlement at the website for the plaintiffs' counsel: American Civil Liberties Union of Missouri Foundation, <http://www.aclu-mo.org/legal-docket/bobbie-lane-v-modoc/>.

The plaintiff class consists of "All current and future publishers, distributors, and authors of written materials, who mail books, publications, or other written materials to inmates incarcerated in prisons operated by the Missouri Department of Corrections."

The basic terms of the settlement are:

- Publications received in the mail and thought to violate censorship guidelines will now be reviewed by the censorship committee before any censorship occurs. Furthermore, the sender of publications that are censored will receive written notice of the decision and will have the opportunity to appeal the censorship. Within 30 days of receipt of the appeal, the division director or designee of equal or higher ranking will respond to the appeal. The Chief Administrative Officer will be advised of the decision.
- Recorded materials and personal correspondence will not be reviewed by a committee before censorship; however, the senders of such materials that are censored will be given notice of the decision and the opportunity to appeal.
- The defendants will pay the plaintiffs' counsel \$33,479.45 to reimburse litigation expenses and in attorneys' fees.

### RIGHT TO OBJECT

Any class member has the right to let the court, the attorneys, and the parties know if he or she objects to the proposed settlement. The court has set a hearing for this purpose on July 1, 2014, at 10:00 a.m. at the following address:

Honorable Nanette K. Laughrey  
United States District Judge  
United States District Court for the Western District of Missouri  
United States Courthouse  
80 Lafayette Street  
Jefferson City, Missouri 65101.

Class members may also object to the settlement by sending a letter marked "Lane v. Lombardi Settlement" before June 26, 2014, to the court at the address listed above. Class members may also call the American Civil Liberties Union of Missouri Foundation, which represents the class in this lawsuit, with any questions, at: (314) 652-3114.

# Pay Tel Receives Waiver of Prison Phone Rate Caps

ON JANUARY 8, 2014, PAY TEL COMMUNICATIONS, a North Carolina company that provides phone services at correctional facilities in 13 states, filed a petition requesting a waiver of the rate caps on interstate (long distance) prison phone calls imposed by the Federal Communications Commission. The rate caps went into effect on February 11, 2014. [See: *PLN*, Feb. 2014, p.10].

As a result of longstanding efforts by prisoners, their family members and advocacy organizations (including the Campaign for Prison Phone Justice) against exorbitant prison and jail phone rates, the FCC ordered the rate caps and other reforms after examining the issue for almost a decade in a proceeding known as the Wright petition. The rate caps include a maximum of \$.25 per minute for collect interstate calls and \$.21 per minute for debit or prepaid interstate calls. [See: *PLN*, Dec. 2013, p.1].

The FCC's Wireline Competition Bureau found that Pay Tel had "met its burden of proof to establish a good cause

to grant a limited, temporary waiver of the Commission's interim [prison phone] rate cap rule." Accordingly, on February 11, 2014, Pay Tel received a nine-month "narrow waiver" that allows the company to charge phone rates above the caps, not to exceed \$.46 per minute for interstate prison phone calls – or up to \$6.90 for a 15-minute call. Absent any further action by the FCC, the waiver will expire on November 11, 2014. See: *In the Matter of Rates for Interstate Inmate Calling Services*, FCC WC Docket No. 12-375.

Pay Tel had argued it could not recover its costs if it was required to comply with the FCC's rate caps, due to intrastate (in-state) rate restrictions in five of the states where it provides phone services. The Human Rights Defense Center – the parent organization of *Prison Legal News* – had filed comments with the FCC contesting the claims made by Pay Tel in its waiver petition.

Separately, other prison phone service providers such as Global Tel\*Link (GTL) and Securus have challenged the FCC's rate caps and other reforms in the D.C. Circuit

Court of Appeals, and Securus has applied for a blanket rate cap waiver in all of the states where Pay Tel has contracts. But unlike Pay Tel, Securus did not submit detailed documentation indicating how the rate caps would inhibit the company's ability to recover its costs. Pay Tel had submitted records to the FCC and Wireline Competition Bureau showing that its costs exceeded the rate caps, which was instrumental in obtaining the waiver.

The petitioners in the Wright petition have opposed Securus' request for a "me too" rate cap waiver, noting that "Securus has steadfastly refused to provide any actual cost data to the FCC." By continuing to pay commission kickbacks to correctional agencies for intrastate calls while failing to provide the FCC or Wireline Competition Bureau with financial statements that demonstrate the company's actual costs, it will be more difficult for Securus to justify its waiver request.

The Wright petitioners argued in a March 11, 2014 comment in opposition to Securus' request that "until such time that Securus and the other [prison phone service] providers are willing to submit the same financial information as provided by Pay Tel Communications in connection with its Petition for Waiver, i.e., audited Financial Statements, substantive cost studies, the FCC must deny any attempt to extend similar relief."

Meanwhile, both GTL and Securus have stated that due to the rate caps imposed by the FCC, they are no longer paying commission kickbacks to correctional agencies on revenue generated from interstate prison phone calls. ■

## BRANLETTES BEAUTIES

### OUR SIMPLE POLICIES:

SPECIAL REQUESTS ARE NOT PERMITTED AND ALL MODELS ARE OF LEGAL AGE (BOP-FRIENDLY). DUE TO TREMENDOUS TIME AND COST ANSWERING LETTERS, UNLESS YOU ARE PLACING AN ORDER OR A QUESTION REGARDING YOUR ORDER, WE WILL NOT REPLY TO ANY OTHER QUESTIONS. SASE ARE REQUIRED FOR ANY INQUIRIES OR CONCERNS!

**YOU AND YOU ALONE ARE RESPONSIBLE FOR YOUR SELECTIONS BEING ALLOWED INTO YOUR FACILITY:**

KNOW YOUR INSTITUTIONS POLICIES AS TO WHAT IMAGE CONTENT IS ALLOWED. RETURNED ORDERS ARE NON-REFUNDABLE. THEY WILL BE HELD FOR 14 CALENDAR DAYS IN ORDER FOR YOU TO SEND SELF-ADDRESSED STAMPED: 3 FIRST CLASS STAMPS PER ENVELOPE, WITH A STREET ADDRESS FOR EVERY 20 PICTURES. ALL RETURNED IMAGES HELD AFTER TWO WEEKS WILL BE RESOLD AND WE WILL RETURN TO OUR STOCK.

ALL PAYMENTS ARE BY INSTITUTIONAL CHECKS OR U.S. POSTAL SERVICE OR WESTERN UNION MONEY ORDERS.

THESE PAYMENTS ARE PROCESSED IMMEDIATELY AND SHIPPED IN LESS THAN 3-4 WEEKS. ANY OTHER COMPANY MONEY ORDERS DELAY SHIPMENT 8-10 WEEKS OR UNTIL THAT MONEY CLEARS OUR BANK. YES, WE DEAL WITH PEOPLE THAT ARE, WHILE IN PRISON, STILL TRYING NICKEL AND DIME SCAMS...

**ALL SALES ARE FINAL! EACH CATALOG HAS 84 GORGEOUS LADIES TO CHOOSE FROM HIGH QUALITY PRINTS ON 4X6 GLOSSY PHOTO PAPER**

OUR PRICES ARE SIMPLE:

1-4999 PHOTOS = 0.45 CENTS EACH  
5000+ PHOTOS = 20% DISCOUNT  
1-9 CATALOGS: \$3.00 EACH (+SASE)  
10 CATALOGS: \$25.00+SASE (4 STAMPS)

SHIPPING & HANDLING:

DUE TO VARIOUS PRISON POLICIES REGARDING HOW MANY PICTURES CAN BE SENT IN ONE ENVELOPE, OUR POLICY IS AS FOLLOWS:

01 - 5 PHOTOS---\$1.00 PER ENVELOPE  
06 - 15 PHOTOS---\$1.50 PER ENVELOPE  
16 -25 PHOTOS---\$2.00 PER ENVELOPE

### BRANLETTES BEAUTIES

SELECT YOUR FAVORITE:

WHITE CATALOGS (60 VOLUMES)  
BLACK CATALOGS (60 VOLUMES)  
ASIAN&LATINO CATALOGS (60 VOLUMES)  
PLEASE STATE WHAT STYLE PHOTOS'S:  
PROVOCATIVE POSES OR NUDE

FREE CATALOG???

YOU READ IT RIGHT!  
JUST SEND US TWO U.S. FOREVER STAMPS AND A SELF ADDRESSED SELF ENVELOPE AND WE WILL SEND TO YOU ONE NUDE OR BOP-FRIENDLY SAMPLE CATALOG (1 PER CUSTOMER) WITH 84 GORGEOUS GIRLS IN FULL COLOR. ACT NOW AS THIS OFFER WILL NOT BE AROUND LONG!!

BRANLETTES BEAUTIES BEAUTIES BAG A RANDOM SELECTION OF 50 OF THE RARE AND EXOTIC \*\*\*\*\*YES, FIFTY BEAUTIES ALL POSING JUST FOR YOU! \*\*\*\*\* PLUS TWO OF OUR FINEST COLOUR CATALOGS ONLY \$19.95 DID YOU READ THAT RIGHT??? \*\*\*\*\*\$19.95??? YES, ONLY \$19.95 FOR 50 OF BRANLETTES BEAUTIES BEAUTIES (PLEASE SPECIFY NUDE OR BOP-FRIENDLY) \*\*\*\*\*PLUS TWO OF OUR FINEST COLOUR CATALOGS FREE (YOU PICK A VOLUME) OUR REGULAR SHIPPING AND HANDLING POLICIES APPLY.

BRANLETTES  
P.O. BOX 5765  
BALTIMORE, MD  
21282

## WISDOM IS THE KEY TO SUCCESS Get Wise; Get a SMITH'S GUIDE™

### SMITH'S GUIDE to Executive Clemency for State and Federal Prisoners

For those who have exhausted all legal remedies or have sentences that are too long to serve, this book lays out every aspect of the clemency process. [288 pages]

### SMITH'S GUIDE to Chapter 7 Bankruptcy for Prisoners (June 2014)

Get immediate freedom from liens against offender account by filing chapter 7 bankruptcy. Includes required bankruptcy forms and detailed filing instructions.

\$24.95 + \$6.95 shipping/handling (in CA, include additional sales tax of \$2.18) for each book. Please specify book(s) ordered. Sent via USPS media mail. Money orders, personal checks or institutional checks ONLY. Send name, address and DOC/BOP number, with payment of \$31.90 (in CA, \$34.08) per book, payable to Roberts Company:

Roberts Company, 15412 Electronic Lane #101  
Huntington Beach, CA 92649  
Also available on Amazon.com



# Oregon Judge Scolded for Courtroom Rant

by Mark Wilson

**T**HE OREGON SUPREME COURT HAS publicly censured a trial court judge for a profanity-laced tirade during a sentencing hearing.

In October 2011, Richard Lee Taylor, 60, was convicted of 21 sex offenses involving two 12-year-old boys. Evidence of his crimes included video recordings that showed Taylor sexually abusing the victims. The recordings were so disturbing that jurors thanked Jackson County Circuit Court Judge Tim P. Barnack when he stopped some of the videos from being shown during the trial. Several jurors wept and three asked if they could receive counseling.

Since Taylor had a prior California sex abuse conviction, prosecutors requested that he receive a life sentence.

Judge Barnack gave Taylor the opportunity to speak during his January 21, 2012 sentencing hearing, but Taylor said he had "nothing to say."

That apparently was the last straw for the judge. "I don't think you have a soul," Barnack stated. He called Taylor a "piece of shit"

and said community members wondered why he wasn't "hanging from a tree." The judge repeatedly asked Taylor if he wanted to salvage his soul, and said he personally hoped that Taylor rots in prison.

"We are going to make sure you never get out," Judge Barnack remarked as he sentenced Taylor to 21 life sentences without the possibility of parole. "I've seen the cells for people like you. They're skinny, they're small, and I think you get an hour of daylight. You will rot, and for what you did to these people, that's where you should be."

Judge Barnack sent an email to other Jackson County Circuit Court judges after the sentencing hearing, apologizing for his remarks. He said that he, too, was traumatized by the evidence in the case, and that he lost control of his emotions when Taylor declined to speak because he felt Taylor's silence "evidenced an indifferent and unsympathetic attitude towards his victims, one of whom was in the courtroom."

Barnack acknowledged that his comments

were inappropriate and he sought counseling from more experienced judges regarding the best way to manage emotionally-charged courtroom situations. As a result he adopted new procedures, including the use of a prepared script during sentencing to ensure that his outburst would not be repeated.

"I've learned from this experience and I look forward to continuing to serve the people of Jackson County," he said.

The Oregon Supreme Court noted that Judge Barnack and the Commission on Judicial Fitness and Disability stipulated that he had violated two rules of the Oregon Code of Judicial Conduct, and Barnack agreed to a public censure. The Supreme Court approved the censure, which does not impact his duties as a judge or include any fines or fees. See: *In re Barnack*, 353 Ore. 205, 299 P.3d 525 (Or. 2013).

Judge Barnack is currently running for re-election in 2014. ■

Additional source: [www.kdrv.com](http://www.kdrv.com)

## INMATE TOLL BUSTERS

### Discount Inmate Telephone Calling Services

*Serving: Federal & State Prisons, County Jails and INS Detention Centers Nationwide*

**FREE Same Day Installation, Only \$1.25 Per Month and 6¢ Per Minute**

### PAY ONLY FOR MINUTES YOU USE

**[www.InmateTollBusters.com](http://www.InmateTollBusters.com)**

**Call 24 Hours: 888-966-8655**

We Send Calls To Cell Phones.  
International Call Services Available.  
Call For Rates. Se Habla Español.



# Research Finds that Conjugal Visits Correlate with Fewer Sexual Assaults

**A** STUDY CONDUCTED BY RESEARCHERS at Florida International University (FIU) found that state prison systems that permit conjugal visits report fewer rapes and sexual assaults than those where such visits are prohibited – a finding that the researchers said tends to dispute the theory that sex offenses are crimes of power rather than a means of sexual gratification.

“Our findings propel the idea that sexual violence can be attenuated given appropriate policy initiatives,” stated the authors of the 2012 study, Stewart D’Alessio, Jamie Flexon and Lisa Stolzenberg. In spite of the report’s findings, two states recently announced that they are discontinuing their conjugal visitation programs.

The FIU study was conducted over a three-year period, from 2004–2006, in the five states that provided conjugal visits at that time: California, Mississippi, New Mexico, New York and Washington. [See: *PLN*, May 2013, p.1].

“Inmate-on-inmate sexual offending is much less pronounced in states that allow conjugal visitation,” the study concluded.

While sexual violence occurred in state prison systems that prohibit conjugal visits at an average rate of 226 incidents per 100,000 prisoners, it occurred almost four times less frequently in the five states that permitted such visits – 57 per 100,000 prisoners.

The FIU researchers said the effect of conjugal visitation in reducing sexual assaults among prisoners should encourage more states to consider allowing such visits, which the study noted have other positive effects. For example, conjugal visits, also known as family visits, help “improve the functioning of a marriage by maintaining an inmate’s role as husband or wife, improve the inmate’s behavior while incarcerated, counter the effects of prisonization, and improve post-release success by enhancing the inmate’s ability to maintain ties with his or her family.”

“Additionally,” the study continued, “because conjugal visitation is reported to reduce homosexual activity and because AIDS is often spread by homosexual activity, conjugal visitation may help to attenuate the spread of AIDS in prison.”

The researchers acknowledged their

study had certain limitations, particularly that rape and sexual assault among prisoners are underreported and, as a result, there could have been more incidents of sexual victimization in states that allow conjugal visits than reflected in their data.

Nevertheless, the authors of the study maintained that their findings have “other policy implications.” Treatment programs, they argued, “should be geared to view sexual offending as a sex crime instead of solely as a crime of power.” Such programs, the study said, could reduce recidivism among sex offenders.

On February 1, 2014, Mississippi joined the 45 states that prohibit conjugal visits, halting the century-old practice due to what officials called budget issues and concerns about babies being born as a possible result of the visits.

“There are costs associated with the staff’s time, having to escort inmates to and from the visitation facility, supervising personal hygiene and keeping up with the infrastructure of the facility,” Mississippi DOC Commissioner Christopher B. Epps said in a press release. “Then, even though we provide contraception, we have no idea how many women are getting pregnant only for the child to be raised by one parent.”

Of the more than 22,000 prisoners in Mississippi state prisons, just 155 were allowed conjugal visits in fiscal year 2013. Under the program, the visits were available only to prisoners classified as minimum- or medium-security who did not have a written rules violation within the previous six months.

“While both the extended family visitation and conjugal visit program involve a small percentage of inmates, the cost coupled with big-ticket items adds up,” Epps stated. “The benefits of the programs don’t outweigh the cost in the overall budget.”

Family members who participated in the visits strongly disagreed.

Tina Perry, 49, who had been visiting her incarcerated husband every few months for the past eight years, said prisoners’ spouses should not be forced to suffer any more than they already do, and the state should not deprive them of something that is an infrequent but important part of their relationship.

Some spouses argued it’s not about the sex but rather about privacy. “The little 60 minutes isn’t a lot of time, but I appreciate it because we can just talk and hold each other and be with each other,” said Ebony Fisher, 25, who would drive nearly three hours to see her husband, who is serving a 60-year sentence. But Fisher also admitted that the end of conjugal visits means no more children for the couple.

“Let me have that option,” she said. “I feel like they are taking away my choice.”

“You never just get husband and wife time” during regular prison visits, noted Amy Parsons, who drove eight hours for a one-hour conjugal visit with her husband, who is not due to be released until 2022.

“It’s not romantic, but it doesn’t matter,” she said. “I just want people to realize it’s about the alone time with your husband. I understand they are in there for a reason. Obviously they did something wrong. But they are human, too. So are we.”

Even prison officials conceded that the visits were a deterrent to unruly behavior among prisoners. “Conjugal visits have been a privilege,” noted Mississippi DOC spokeswoman Tara Booth. “So in that sense, it has, as other internal opportunities, helped to maintain order.”

On April 16, 2014, New Mexico prison officials announced the end of conjugal visits effective the following month, citing concerns about contraband and sexually transmitted diseases. They estimated annual savings of around \$120,000 by discontinuing the visitation program, which had been in effect for 30 years.

“Some of these policies are old and tired,” said Corrections Secretary Gregg Marcantel. “They aren’t producing the outcomes we need to help our inmates and make our communities safer.”

Conjugal visitation was implemented in New Mexico following an infamous 1980 riot at the state penitentiary near Santa Fe that resulted in 33 deaths; the visits were intended to help reduce tension in the prison population.

“After two years of research we found the overnight stays had no impact on decreasing the rate of inmates returning to jail,” said New Mexico DOC spokeswoman Alex Tomlin, who noted that only around

150 prisoners qualified for conjugal visits. The visits will be replaced with family programs that include classes on parenting and financial planning.

When discontinuing their conjugal

visitation programs, neither Mississippi nor New Mexico officials addressed the findings of the FIU study relative to the effect conjugal visits have on reducing sexual assaults among prisoners. ■

Sources: "The Effect of Conjugal Visitation on Sexual Violence in Prison," *American Journal of Criminal Justice* (February 2012); [www.usatoday.com](http://www.usatoday.com); [www.mdoc.state.ms.us](http://www.mdoc.state.ms.us); Reuters

## Cancellation of BOP Elderly Offender Pilot Program Moots Appeal

by Michael Brodheim

ON JULY 11, 2013, IN AN AMENDED ruling, the Ninth Circuit dismissed as moot the appeal of a federal prisoner who had been denied entry into a pilot program that allowed the Bureau of Prisons (BOP) to release certain elderly offenders from BOP facilities and place them on home detention, because the program had been discontinued.

The Second Chance Act of 2007 created a pilot program which allowed the BOP, in its discretion, to place certain nonviolent elderly offenders on home detention after they had served the greater of 10 years or 75% of their term of incarceration. [See: *PLN*, Feb. 2009, p.8].

BOP prisoner Perry A. McCullough applied to the elderly offender pilot pro-

gram in 2009. McCullough, who had been sentenced in 1990 to 380 months in federal prison for drug trafficking, calculated that he would be eligible for the program in March 2010 if the BOP took into account his good time credits.

The BOP declined to consider McCullough's good time credits, however, and found he would not be eligible for the pilot program until March 2013, once he had served 75% of his sentence. After exhausting his administrative remedies, McCullough filed a pro se petition for habeas relief in federal court in Arizona. The district court denied his petition because, under a plain language analysis of the applicable statute, the BOP was not required to consider good time credits when

evaluating whether a prisoner was eligible for the program.

Meanwhile, in September 2010, the elderly offender pilot program authorized under the Second Chance Act was discontinued.

The Ninth Circuit held that the cancellation of the program divested it of jurisdiction, and dismissed McCullough's appeal as moot since the relief requested in his petition was "no longer available because of the termination of the pilot program." The Court of Appeals found no applicable exceptions to the mootness doctrine in this case; hence, the district court's dismissal of the habeas petition was affirmed. See: *McCullough v. Graber*, 726 F.3d 1057 (9th Cir. 2013). ■

**William L Schmidt**  
ATTORNEY at LAW, P.C.

[911CIVILRIGHTS@GMAIL.COM](mailto:911CIVILRIGHTS@GMAIL.COM)

**559.261.2222**

### OCTOBER 2013, CALIFORNIA:

- \$90,000 settlement with CDCR and LA Sheriff
- Confidential settlement with CDCR
- \$600,000 injury recovery
- \$150,000 bad faith settlement
- Federal action dismissed without penalty by agency
- Parole dates granted by BPH

CIVIL RIGHTS-SECTION 1983-FEDERAL AND STATE  
APPEALS AND WRITS- ONLY COMPLEX AND UNIQUE CASES  
PRISON-TRANSFER-DISCIPLINE-VISITING-CLASSIFICATION-HOUSING  
PROP. 36 RE-SENTENCING-3 STRIKES-MEDICAL-PAROLE HEARINGS

-----OUR CLIENTS GO HOME, HOW ABOUT YOU? -----

Please submit a single page summary of your case. Due to the volume, we cannot return documents or respond to all inquires. We are not a low cost or pro bono law firm, but if you want results, contact us.

**PO Box 25001  
Fresno, CA  
93729**

# Wisconsin DOC Equips Guards with Pepper Spray, Tasers

A REPORT COMPILED BY THE WISCONSIN Department of Corrections (DOC) found there were 351 assaults, attempted assaults and assault-related injuries involving prison staff from mid-2012 to mid-2013.

In response, Corrections Secretary Ed Wall announced in December 2013 that he was equipping guards with 3-ounce canisters of pepper spray to help prevent and stop violent incidents.

Wall noted that the threat of pepper spray alone can defuse dangerous situations and deter assaults. He said he is also considering furnishing civilian prison employees, such as nurses and teachers, with pepper spray.

Guards at the Milwaukee Secure Detention Facility and the Green Bay Correctional Institution were given pepper spray in a 2013 pilot program. The program, considered to be a success, is expanding statewide.

"The pepper spray is now being rolled out to officers at all minimum- and medium-security institutions," said Wall and DOC Deputy Secretary Deidre Morgan.

State prisons previously had been equipped with Tasers, but they were kept locked up until needed. Now, supervisors in contact with prisoners are allowed to carry Tasers.

"It should have been done a long time ago. You stop stuff before anything happens," stated Sgt. Daniel Meehan at the Waupun Correctional Institution.

Meehan, the local president of the Wisconsin Association for Correctional Law Enforcement, said he welcomed the DOC's plan to equip guards with pepper spray. Not everyone was supportive of the idea, though.

"That's a two-edged sword," observed Marty Beil, executive director of the Wisconsin State Employees Union. "That pepper spray can be taken off an officer as quickly as it can be used by an officer."

Beil credited the DOC with improving its tracking of prisoner-on-staff assaults; for years, such data had been poorly maintained. But the best way to protect employees from being assaulted, he said, would be for DOC administrators to work closely with prison staff.

That was the case before Governor Scott Walker eliminated collective bargaining for most public employees in 2011, Beil

noted. He called the deployment of pepper spray and Tasers "window dressing."

The DOC report found there were 252 assaults on staff, 40 attempted assaults and 59 assault-related injuries from July 2012 to June 2013. Those incidents included attempted assaults that consisted of prisoners unsuccessfully trying to spit on guards, as well as injuries that guards sustained from other staff members when trying to break up fights.

Further, to place the data in context, the 351 assaults, attempted assaults and injuries during the one-year period covered in the DOC report occurred in a prison system with around 21,800 offenders.

According to the report, prisoners with

serious mental health problems accounted for 47% of the assaults; 59% of assaults and 70% of attempted assaults occurred at maximum-security prisons; and approximately 70% of assaults and attempted assaults happened in segregation units.

In addition to equipping guards with pepper spray and Tasers, the DOC has installed boxes on the doors of segregation cells, similar to devices used at bank drive-through windows. Food trays are placed in the box, then the door to the box is closed before it can be opened on the other side. Thus, prisoners are less likely to throw items at staff during meal times. ■

Source: *Journal Sentinel*

## California Prison Regulation Governing Gang Validation Upheld by Ninth Circuit

by Michael Brodheim

LAST YEAR THE NINTH CIRCUIT UPHELD the constitutionality of a California prison regulation that guides state prison officials in determining whether or not a prisoner should be classified as gang-affiliated.

In California, a prisoner affiliated with a gang – whether as a "member" or "associate" – is deemed to pose a threat to institutional safety and security sufficient to warrant placement in administrative segregation. Pursuant to Cal. Code Regs., title 15 § 3378(c)(4), an "associate" is defined to be a person "who is involved periodically or regularly with members or associates of a gang." Prison officials must show such involvement through three independent sources of documentation indicating association with validated gang members or associates.

In April 1997, California state prisoner Carlos Castro was validated as an associate of the Mexican Mafia, a recognized prison gang. He was then transferred to the Security Housing Unit at Pelican Bay State Prison.

Castro filed suit in federal court in 1998, challenging his validation on due process grounds. The district court granted summary judgment to the defendants, which was reversed by the Ninth Circuit in a 2002 ruling that held due process requires prisoners to be

afforded a meaningful opportunity to present their views to the critical decision maker in administrative segregation cases. [See: *PLN*, July 2003, p.17].

Following remand and a bench trial, which "found that Castro did not receive due process in his initial validation procedure," the district court issued an order requiring prison officials to determine whether or not Castro was currently a gang associate. As a result of that order they conducted a second validation inquiry, and again concluded that Castro was a gang associate in April 2011.

On appeal, Castro argued that the definition of "associate" in § 3378(c)(4) is facially unconstitutionally vague, and therefore the procedure used to validate him as a gang associate did not comport with due process.

Finding no case raising a similar challenge, the Court of Appeals began its examination of Castro's claims by assuming that the void-for-vagueness doctrine could be applied to prison regulations. Applying the analysis employed in void-for-vagueness challenges to criminal statutes, the appellate court considered 1) whether § 3378(c)(4) defines "associate" with sufficient definiteness that "ordinary people can understand what conduct is prohibited" (e.g., what conduct can be used as evidence of be-



ing a gang associate), and 2) whether the regulation does so “in a manner that does not encourage arbitrary and discriminatory enforcement.”

The Ninth Circuit concluded that the regulation was not unconstitutionally vague and gave Castro clear notice of the

types of evidence that prison officials could (and did) rely on to validate him as a gang associate. It concluded, moreover, that there was “some evidence” – the standard that should have been used by the district court – which showed, at a minimum, that Castro associated with the Mexican Mafia

on more than one occasion. For example, he had signed a birthday card sent to a validated gang associate and was implicated in a plot to stab another prisoner. The dismissal of Castro’s suit was therefore affirmed. See: *Castro v. Terhune*, 712 F.3d 1304 (9th Cir. 2013). ■

## Oregon PPS Sanctions May Not Exceed 180 Days; Prior Contrary Ruling Overturned

by Mark Wilson

**T**HE OREGON COURT OF APPEALS HAS held that the Parole Board lacks authority to impose incarceration sanctions in excess of 180 days for post-prison supervision (PPS) violations for life-sentenced offenders convicted of murder.

Richard Hostetter was convicted of murder in 1992 and released on PPS in 2006. He then committed a technical violation by using alcohol and failing to report to his parole officer.

On February 11, 2008, the Oregon Board of Parole and Post-Prison Supervision (Board) revoked Hostetter’s PPS and imposed a sanction of 84 months incarceration, establishing a projected release date of January 17, 2015.

Under former OAR 253-11-004(3) (9/1/89), the Board was authorized to impose incarceration sanctions of “up to ninety (90) days for a technical violation and up to one hundred and eighty (180) days for conduct constituting a crime.” The rule also imposed a 180-day cap on total incarceration

sanctions during an entire PPS term, “except as provided in OAR 253-05-004(2)” for offenders like Hostetter serving a life sentence for murder.

“Thus, OAR 253-11-004(3) both limits re-incarceration of an offender for any single PPS violation to 90 or 180 days and places a 180-day cap on aggregate incarcerative sanctions for multiple PPS violations,” subject to the exception in OAR 253-05-004(2). In *Jones v. Board of Parole*, 231 Ore. App. 256, 218 P.3d 904 (Or. Ct. App. 2009), the Oregon Court of Appeals held “that the 90- and 180-day limitations in OAR 253-11-004(3) do not apply to offenders on lifetime PPS for a murder conviction.” The *Jones* court read the exception as applying to both the aggregate cap and individual sanction caps for PPS violations.

Hostetter appealed his 84-month incarceration sanction, arguing that *Jones* incorrectly interpreted the applicable rules. Noting that “the proper construction of

OAR 253-11-004(3) and OAR 253-05-004 was not ‘squarely’ presented ... in *Jones*,” Hostetter argued that *Jones* should be overturned.

The Court of Appeals agreed. Applying rules of statutory construction, the Court concurred with Hostetter “that the Criminal Justice Council and legislature intended that the exception for those on lifetime PPS for murder set forth in OAR 253-05-004 apply only to OAR 253-11-004(3)’s 180-day aggregate limitation.” Such offenders may not receive more than 90- or 180-days sanctions for each individual PPS violation. As such, the Board erred in imposing an 84-month incarceration sanction for Hostetter’s technical violation. See: *Hostetter v. Board of Parole*, 255 Ore. App. 328, 296 P.3d 664 (Or. Ct. App. 2013).

The Board appealed the decision to the Oregon Supreme Court, which denied review on June 20, 2013. ■



Serving You with Excellence Since 2009

**We make it simple.**

**You reach your loved ones by calling a local number. That's a lot cheaper than calling long distance. It's that simple!**

- We charge \$2.50 per month for the number.
- For Calls to anywhere in the U.S., we charge you 5¢ per minute
- To Mexico - 15¢; to Canada - 11¢, to just about anywhere else in the world - 31¢
- No Contract, No Credit Check, No Setup Fee, No Cancellation Fee, No Early Termination Fee
- Cancel anytime; any money left on the account is refunded

Any time you refer a new customer and they sign up, you both get 300 free minutes! Some restrictions apply. Details upon request.

Tell Your Folks to Sign Up at [www.freedomline.net](http://www.freedomline.net)

Or Mail: FreedomLine  
PO Box 7 - SCA  
Connersville, IN 47331

Also see our long-running Classified Ad in this and every issue

FCC Reg. No. 0021217047

# California: Trial Court Cannot Abdicate its Responsibility to Examine Peace Officer Personnel Records

by Michael Brodheim

ON MAY 6, 2013, THE CALIFORNIA Court of Appeal held that a trial court conducting an in camera review of peace officer personnel records must examine the records itself, and cannot abdicate that responsibility in favor of an assessment by the custodian of the records with respect to whether they contain discoverable information.

In November 2007, Costa Mesa police officers, along with state parole agents, traveled to Carlsbad in unmarked vehicles to arrest Ronald Jay Sisson, also known as Brian Lee Olson – a parolee and suspected gang member. In the incident that ensued, the officers fired 27 rounds into Sisson's vehicle after he rammed police cars and struck an officer when attempting to drive away. The gunfire killed Esther Elizabeth Evans, a passenger in Sisson's front seat, who was shot in the head.

Sisson was subsequently charged with one count of provocative act murder in connection with Evans' death plus three counts of assaulting a peace officer with a deadly weapon. He disputed the officers' version of events and filed two discovery motions under *Pitchess v. Superior Court*, 11 Cal.3d 531 (Cal. 1974), seeking complaints of dishonesty, false reporting and excessive force in the officers' and parole agents' personnel files. He alleged the officers and agents had lied and falsified their statements concerning the incident.

Instead of examining the files itself, the trial court placed the custodian of the records under oath and then asked general questions about the contents of the records that had been produced. Only when the custodian indicated that, in its assessment, a record included discoverable information did the trial court actually examine the record. Incredibly, the trial court deferred to the custodian's opinion that the records of an internal affairs review of the shooting incident at issue contained no discoverable information.

The Court of Appeal reversed, noting that under California Supreme Court precedent, "the locus of decision making is to be the trial court, not the prosecution or the custodian of records." Additionally, "while the trial court made an effort to

inquire into what types of documents the custodians opted not to produce, the effort fell short of requiring the custodians to establish on the record what documents or category of documents were included in the officers' complete personnel files and, where applicable, to explain their decisions to withhold certain documents."

The appellate court concluded that Sisson had "showed good cause for discovery of complaints of dishonesty or false reporting as to some officers, but did not show good cause for discovery of complaints of exces-

sive force as to any officers." Accordingly, his petition for review was granted in part and denied in part. See: *Sisson v. Supreme Court*, 216 Cal. App. 4th 24 (Cal. App. 4th Dist. 2013).

In September 2013, Sisson pleaded guilty to a reduced charge of manslaughter and two counts of assault on peace officers using a deadly weapon (his vehicle). He was sentenced to 13 years and 8 months in prison pursuant to a plea agreement. ■

Additional source: [www.sandiegoreader.com](http://www.sandiegoreader.com)

## Connecticut Town Raises Stink Over Sewage Discharged by State Prison

THE TOWN OF CHESHIRE, CONNECTICUT has decided that if it has to take more crap from the Connecticut Department of Correction (CDOC), then it wants help to pay for it.

Discussions are underway between town and state officials to resolve a lawsuit filed by Cheshire in July 2012 that seeks to renegotiate the terms of an agreement with the CDOC, to require the state to help upgrade the town's wastewater treatment plant due to the amount of sewage discharged from a nearby prison complex.

Officials have admitted, though, that the negotiations are not producing any positive results.

"We met with members of the Department of Corrections and Attorney General's office to see if we could negotiate a settlement, but right now it's in court just sitting there," Cheshire town manager Michael Milone said in April 2013.

"In the meantime, we are hoping to appeal to some of the state agencies to resolve this – we are hoping to sit down and negotiate a resolution," he added.

The current agreement allows for 350,000 gallons of effluent each day from the complex, which houses around 2,000 prisoners at the Cheshire Correctional Institution and the Manson Youth Institution. But town officials say that for years, the prison complex has discharged more sewage into the treatment plant than is permitted

by either the town or the state.

"They have an agreement with the town that goes back to 1990 that says that they cannot exceed 350,000 gallons per day and they have consistently exceeded that for nine or 10 years," Milone said. The town is seeking to increase the permit requirements to 450,000 gallons of sewage per day.

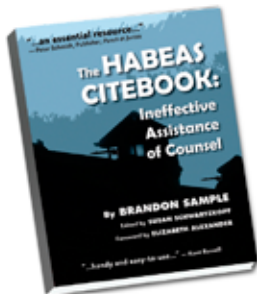
Cheshire officials also want the CDOC to contribute 25% of a planned \$31 million upgrade to the town's wastewater treatment plant; the upgrade, scheduled to begin in late 2012, was estimated to take more than two years to complete.

"[T]he prison represents 25% of the effluence treated there, so the state should pay 25% of the cost," Milone argued. He said the town's lawsuit was prompted by the state Senate's failure to pass legislation that would have required the CDOC to renegotiate its wastewater agreement.

"We've been trying to negotiate the host agreement since 2006, and we don't feel they [state officials] have been negotiating in good faith," said Milone. "We feel we've exhausted all of our options."

Cheshire's lawsuit against the CDOC remains pending. See: *Town of Cheshire v. State of Connecticut DOC*, Hartford Superior Court (CT), Case No. HHD-CV-12-6033159S. ■

Sources: *Associated Press*, [www.therepublic.com](http://www.therepublic.com), [www.cheshire.patch.com](http://www.cheshire.patch.com), [www.nhregister.com](http://www.nhregister.com)



**The Habeas Citebook: Ineffective Assistance of Counsel**  
**Brandon Sample**  
 ISBN: 978-0-9819385-1-6  
 Paperback, 224 pages

**\$49.95**

The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an invaluable resource that identifies hundreds of cases where the federal courts have granted habeas relief to prisoners whose attorneys provided ineffective assistance of counsel.



**Prisoners' Guerrilla Handbook to Correspondence Programs in the United States and Canada, 3rd Edition**  
**Jon Marc Taylor**  
 ISBN: 978-0-9819385-0-9  
 Paperback, 224 Pages

**\$49.95**

The greatly anticipated and newly updated third edition of the Prisoner's Guerrilla Handbook to Correspondence Programs in the United States and Canada has finally arrived! Author Jon Marc Taylor's brand new version is the latest in this unique and highly successful guidebook for the prisoner-student. This invaluable tool and how-to handbook provides the reader with step-by-step instructions to find the appropriate education program for correspondence high school, vocational, paralegal, undergraduate, and graduate courses offered in the U.S. and Canada today.



**Prisoners' Self-Help Litigation Manual, 4th Edition**  
**John Boston & Dan Manville**  
 ISBN: 978-0-1953744-0-7  
 Paperback, 960 pages

**\$45.95**

Prisoners' Self-Help Litigation Manual, in its much-anticipated fourth edition, is an indispensable guide for prisoner litigants and prisoner advocates seeking to understand the rights guaranteed to prisoners by law and how to protect those rights. Clear, comprehensive, practical advice provides prisoners with everything they need to know on conditions of confinement, civil liberties in prison, procedural due process, the legal system, how to actually litigate, conducting effective legal research, and writing legal documents. It is a roadmap on how to win lawsuits.

- ☐ Habeas Citebook,  
Ineffective Assistance of Counsel  
\$49.95
- ☐ Prisoners' Guerrilla Guide to  
Correspondence Programs  
3rd edition  
\$49.95
- ☐ Prisoners' Self-Help  
Litigation Manual  
4th edition  
\$45.95

**Shipping included in all prices**

**Order by mail, phone, or on-line.** Amount enclosed \_\_\_\_\_

By: ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_ ZIP \_\_\_\_\_

PUBLISHED BY

**PRISON LEGAL NEWS**  
 Dedicated to Protecting Human Rights

PO Box 1151 • Lake Worth, FL 33460  
 Tel 561-360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

# Prison Education Programs Threatened

by Matt Clarke

CORRECTIONS OFFICIALS ACROSS THE country fear that two recent developments will drastically limit educational opportunities for prisoners – a scenario that research indicates could lead to higher recidivism rates.

First, Congress failed to renew federal funding in 2011, 2012 and 2013 for a grant program that helps finance higher education courses for prisoners. The grants, known as Specter funds – named after correctional education advocate and late-U.S. Senator Arlen Specter – provided money to state prison systems that helped underwrite a portion of the cost of post-secondary programs for prisoners.

The second development concerns significant changes in the GED program that allows people to earn the equivalent of a high school diploma. Starting on January 1, 2014, the test was realigned to match Common Core State Standards, and the old pencil-and-paper exams were eliminated in favor of a computer-based test. Most prisons and jails that offer GED classes will be affected by the change.

## Prison Education Research

THE ELIMINATION OF SPECTER FUNDS compounds the woes of prison education programs that are already suffering from cuts imposed by states facing budget shortfalls. A study conducted by the non-profit RAND Corporation on behalf of the federal Bureau of Justice Assistance found that states reduced funding for prison education programs by an average of 6% between fiscal years 2009 and 2012. The study reported

that states with large prison populations cut prison education funding by 10%, on average, while states with medium-sized populations slashed education budgets by an average of 20%.

The February 2014 RAND report, “How Effective is Correctional Education, and Where Do We Go from Here?,” found that academic courses were hardest hit by the state funding cuts.

“There has been a dramatic contraction of the prison education system, particularly those programs focused on academic instruction versus vocational training,” said Lois Davis, a RAND senior policy researcher and the study’s lead author. “There are now fewer teachers, fewer course offerings and fewer students enrolled in academic education programs,” she remarked in a statement released along with the report.

Further, the study found that on average, every dollar spent on prison education programs results in a savings of four to five dollars in the cost of re-incarcerating prisoners within the three years following their release, due to lower recidivism rates.

“We need to weigh the short-term need to reduce budgets with the long-term consequence of trimming programs that help keep people from returning to prison after they have paid their debt to society,” Davis said.

The RAND report integrated a 2013 meta-analysis of more than 30 years of previous research which concluded that “inmates who participated in correctional education programs had 43% lower odds of returning to prison than inmates who did not.” The positive impact of prison-based education programs on recidivism rates has long been known. [See: *PLN*, March 2012, p.10].

“These findings reinforce the need to become smarter on crime by expanding proven strategies for keeping our communities safe, and ensuring that those who have paid their debts to society have the chance to become productive citizens,” U.S. Attorney General Eric Holder said when the meta-analysis findings were released in August 2013.

“Correctional education programs provide incarcerated individuals with the skills and knowledge essential to their fu-

tures,” added U.S. Secretary of Education Arne Duncan. “Investing in these education programs helps released prisoners get back on their feet – and stay on their feet – when they return to communities across the country.”

Further, the RAND report determined the odds of an offender finding employment after release from prison was 13% higher for those who participated in academic or vocational programs compared to those who did not. Prisoners who received vocational training were 28% more likely to obtain post-release employment.

Despite the numerous studies that have linked increased educational opportunities to lower recidivism rates, state officials are skeptical about future federal funding for post-secondary prison education programs – which was largely gutted after such programs were barred from receiving federal Pell grants under President Clinton in 1994. [See: *PLN*, Jan. 1998, p.4; Dec. 1994, p.7]. As a result of the loss of Pell grants, college programs for prisoners dropped from approximately 350 nationwide to around a dozen, according to *The New York Times*.

## Loss of Specter Funds

THE DISCONTINUATION OF FEDERAL Specter funds starting in 2011 has prison education officials nationwide scrambling to find alternative funding sources.

“I’m not a pessimistic person, but I don’t see this one coming back any time soon,” said Stephen Steuerer, executive director of the National Correctional Education Association (NCEA), in reference to the end of Specter funds. “We’re cutting our own throats,” he added.

Specter funds had been provided through the Grants to States for Workplace and Community Transition Training for Incarcerated Individuals, 20 U.S.C. § 1151.

For example, Minnesota’s prison system received around \$150,000 per year in Specter funds; the money was used to partner with state colleges and universities, which provided teachers and class materials. When the funding was cut in 2011, the partnership did not dissolve because the state prison system had a surplus from previous years, but that was only temporary. Minnesota prison officials have admitted

## TYPING

### SERVICES

Provided since 1998

Specifically designed, with special rates for the incarcerated person.

Black / Color Printing and Copying

SEND A SASE FOR A “FREE” PRICE LIST AND MORE INFORMATION TO:

LET MY FINGERS DO YOUR TYPING

Sandra Z. Thomas (dba)

P O Box 4178

Winter Park, Florida 32793-4178

Phone: 407-579-5563

Special Offer: \$2.00 off first order.

Special offer void after: 12/31/2014



they don't know where they will secure new funding, but vowed to continue looking.

"It's an important program, and we're going to do what we can to try and keep it continuing," insisted George Kimball, the prison system's director for adult education.

Other state corrections officials have found themselves in a similar position; about a third of the nation's prisons offer post-secondary education programs of some type.

West Virginia will be cutting classes by half or worse, according to Fran Waring, superintendent of the state's Office of Institutional Education Programs.

"There's no money," complained Waring. "They did away with Pell grants, and now they've done away with this."

In Florida, Specter funds were used to support a number of prison vocational programs, including web design courses at the Lawtey Correctional Institution and Hernando Correctional Institution; a culinary arts program at the Madison Correctional Institution; and a landscape irrigation course at the Suwannee Correctional Institution.

NCEA President Don Kiffin, who is in charge of education at a prison in Oklahoma, said his institution was down to its last semester of funding after losing \$7,000 to \$10,000 in annual Specter funds.

"A lot of people coming to me that want to go to school [are] wondering why I can't give them money to go," Kiffin stated. "I have to pick, choose and refuse."

"You can basically kiss the post-secondary programs goodbye," remarked NCEA director Steurer, referring to the Maryland prison system where he worked before retiring.

Steurer said short-sighted politicians don't look at the long-term benefits of prisoner education, such as lower prison populations due to reduced recidivism or having more former prisoners become productive, tax-paying citizens.

Legislation introduced in the U.S. House of Representatives, H.R. 803, known as the SKILLS Act, repeals the statute that authorizes Specter funds and replaces it with a different federal funding initiative for prison education programs. H.R. 803 passed in the House in March 2013; a companion bill in the Senate, S.B. 1911,

was introduced in January 2014 and has been referred to a committee.

## Changes in GED Testing

MEANWHILE, THE RAND STUDY PREDICTED that recent changes to GED testing will pose another threat to prison education programs. The report warned that the realignment of the test to Common Core State Standards and the switch to a computer-based exam could have a negative impact on prisoners trying to earn their GEDs.

"These two changes have important implications for correctional administrators and educators in terms of preparing for and implementing the new test," RAND stated. "Educators will need to be prepared to teach the [new standards] and prepare students for a more rigorous GED test that will require students to demonstrate high-level thinking skills and exhibit deeper levels of knowledge in four subject areas."

The report said the switch to a computer-based test will make the exam even more difficult for prisoners in programs that generally have limited technology resources. It "will require educators to prepare students

**ColdCrib**  
#1 JAILHOUSE CATALOG  
ISSUE#3 OUT NOW!  
3 FREE Non-Nude PHOTOS INCLUDED!  
ONLY \$10  
www.coldcrib.com

THE TRUTH ABOUT SAVING ON JAIL CALLS  
LEARN HOW TO GET FEMALE COMPANIONS ON THE OUTSIDE  
"CORRECTIONAL FACILITY FRIENDLY"

**WITH PURCHASE**  
INMATES MUST SEND \$10  
TO GET YOUR OWN MULTI-PAGE  
CATALOG/MAGAZINE TO ORDER  
HUNDREDS OF LOVELY LADIES PHOTOS  
& OTHER SERVICES FOR THE INCARCERATED

**GET MAIL FROM FEMALE PENPALS**  
GET LISTED ON OUR PENPAL SITE  
www.COLDCRIB.com  
Send your photo and info along  
with \$30 for 1 FULL year membership  
OR \$30 for Pen-Pal List of up to 50 addresses  
of our registered female PenPals

**ColdCrib communications**  
INMATES CALL CELL PHONES  
\$17/mo Unlimited Calls  
+ \$15 ONE TIME Activation Fee  
Federal, State, County & Local Facility Inmates  
Local Number Provided Same Day!

**NOW INMATES CAN ORDER THEIR OWN NUMBERS!**  
MAKE EVERY CALL HOME A LOCAL CALL  
NO MORE RUNNING OUT OF MINUTES!  
SEND \$3 FOR PHONE PLAN APPLICATION FORM  
OR HAVE YOUR LOVED ONES ORDER ONLINE  
www.ColdCribCommunications.com

**SPECIAL OFFER**  
BEST 4X6 PHOTOS  
VARIOUS BACKSHOTS & POSITIONS  
SET OF 15 (NON-NUDE) SEXY PHOTOS  
ONLY \$16  
MUST ADD \$2 S/H FOR ALL ORDERS

INMATES MUST SEND FACILITY CHECK OR MONEY ORDERS  
COLD CRIB  
PO BOX 682407  
FRANKLIN TN 37069

## Learn The Law!

It's a POWERFUL influence in your life.

Choose education to help yourself and others. Blackstone's Independent Study Paralegal Program offers you the opportunity to be productive while serving time.

- Learn Civil & Criminal Law
- Learn Legal Research
- 110 Years of Legal Training Experience
- Study in Your Spare Time
- Affordable Tuition, Easy Payment Plan

Only  
**\$30.00**  
Per Month

☐ **Yes! I'd like to learn more** ☐ **Paralegal Course**  
Please rush me **FREE** course information.

Name \_\_\_\_\_ Doc# \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**Blackstone**  
**Career Institute**

Your tuition cost covers your entire program including all textbooks, study guides, exam and homework evaluation services, and your certificate.

P.O. Box 3717 • Allentown, PA 18106

## Threats to Prison Education (cont.)

to have a level of computer literacy and skills necessary to successfully navigate the test,” which in turn has “implications when it comes to agency budgets and professional development needs of educators and present[s] a number of logistical concerns when it comes to preparing to implement computer-based testing.”

According to RAND, 31 states plan to use the new, more difficult GED exams. A survey of correctional education directors in those states found that 52% believe the new tests will have a negative impact on the number of prisoners who earn GEDs. Further, 68% indicated that as a result, they anticipate a decline in the number of prisoners participating in GED programs.

The RAND report also found that 42% of state prison education officials believe it will take more time for prisoners to prepare for the redesigned tests, and 45% said they expect fewer prisoners will be adequately prepared.

Facilities that do not currently have computers to provide the new tests can request a waiver to continue using paper exams on a temporary basis. According to the GED Testing Service, “Prisons not able to offer computer-based testing will continue to offer the 2002 Series GED Test on paper for a limited approved amount of time.”

Over 75% of the states responding to the RAND survey reported that the increased cost of implementing computer-based GED testing was a concern. The new GED exams will cost around \$120 each, which, according to *USA Today*, is a significant increase from the \$70 average cost for paper tests. In some jurisdictions the

increase may be passed along to students in whole or part, though GED testing costs are sometimes subsidized by public agencies.

As noted in the RAND report, the new GED exam comes on the heels of a growing trend by states to slash funding for prisoner education. In Oregon, for example, Department of Corrections spokesman Betty Bernt said the state cut roughly \$100,000 from the department’s Adult Basic Skills Development program in the four years between 2009 and 2013. The budget cuts led to a nearly 13% drop in the number of prisoners participating in the program.

Due to the cost increase of the new GED exam, some correctional facilities are switching to an alternative, less expensive high school equivalency test known as HiSET.

### A Case Study: Prison Education in New York

IN NEW YORK, A SENIOR OFFICIAL WITH the administration of Governor Andrew Cuomo told reporters at a March 31, 2014 briefing that non-profit organizations and foundations had expressed interest in financing the governor’s plan to expand college classes at 10 state prisons.

The announcement signaled the revival of a program that Cuomo unveiled in February 2014, which was quickly scuttled after New York state lawmakers voiced fierce opposition to using taxpayer dollars to fund college courses for prisoners.

Cuomo first detailed the proposal in a speech to the New York State Black, Puerto Rican, Hispanic and Asian Legislative Caucus. The governor said New York spends about \$60,000 per prisoner – what he called “more money than it takes to send a person to Harvard for a year” – and that paying for one year of college education for the same prisoner would cost about \$5,000.

“We’re imprisoning, we’re isolating, but we’re not rehabilitating the way we should,” Governor Cuomo said at the time.

The plan drew immediate praise from the Caucus. “A higher level of education will support these men and women in moving forward with their lives, as opposed to returning to criminal activity and prison,” stated Caucus chairman and state Assemblyman Karim Camara.

The deal-breaker for lawmakers, however, was the plan to use taxpayer money to fund the initiative. Republican state Assemblyman Joe Borelli said the issue was

not the proposal itself but rather that the plan favored one group of people – prisoners – over another.

“The problem with the program is not the idea of rehabilitation for convicted felons,” said Borelli. “The problem is the fundamental inequity of the proposal.... How can we provide a free education for people who have made the wrong choices in life, while we let the people who made good choices struggle?”

Borelli noted that college students in New York typically incur an average of \$25,537 in student loans.

Governor Cuomo had touted the plan as a way to reduce future prison spending. State data shows that New York’s recidivism rate is approximately 40%. By comparison, since 1999 the rate of re-incarceration dropped to only 4% for prisoners who participated in an existing post-secondary education program sponsored by Bard College at six medium- and maximum-security New York state prisons. As of 2013, more than 250 prisoners have obtained degrees through the Bard Prison Initiative.

“I understand the sentiment” against using public funds to pay for colleges classes for prisoners, the governor conceded at a news conference to mark the passage of the new state budget. “I don’t agree with it, but I understand it, and I understand the appearance of it.”

Currently, higher education programs are offered at 22 New York state prisons; most are funded with private money. For example, the Prison-to-College Pipeline, a project of the John Jay College of Criminal Justice, began offering classes at the Otisville Correctional Facility in 2011. Other college programs are provided through Bard and Cornell University.

Governor Cuomo’s proposed initiative would have expanded existing programs so more prisoners could participate in college courses and earn associate’s and bachelor’s degrees. ■

Sources: *Minnesota Daily*, *Wall Street Journal*, *Staten Island Advance*, [www.vera.org](http://www.vera.org), [www.johnjayresearch.org](http://www.johnjayresearch.org), *Associated Press*, *The New York Times*, [www.syracuse.com](http://www.syracuse.com), [www.rand.org](http://www.rand.org), [www.justice.gov](http://www.justice.gov), [www.gedtesting-service.com](http://www.gedtesting-service.com), [www.bpi.bard.edu](http://www.bpi.bard.edu), [www.theatlantic.com](http://www.theatlantic.com), [www.campustechnology.com](http://www.campustechnology.com), *USA Today*, “How Effective is Correctional Education, and Where Do We Go from Here?” *RAND Corporation* (Feb. 2014)



**APPEALS, POST-CONVICTION,  
HABEAS, § 2255, PAROLE**

**IDAHO ONLY**

Craig H. Durham, Attorney at Law  
910 W. Main Street, Suite 328  
Boise, ID 83702  
[chdlawoffice.com](http://chdlawoffice.com)

## ***FIYA GIRLS IS HERE!!!***

Check us out! ***We are the best in the game!!*** Here we have the sexiest and hottest babes. We have plenty of nail biting catalogs, with different types of breath-taking women of all races to choose from. **Fiya girls catalogs has the biggest selections to choose from.**

1. Send **\$2.00 or 5 stamps** to receive hi gloss color catalog **#19**. It has **over 450 white girls, coeds**, and Spanish girls. All hot poses in bras, g strings and panties. It also comes with 1 free pic.
2. Send \$2.00 or 5 stamps to receive hi gloss color catalog **#18**. It comes with one free pic. It has over 440 new black, white, and Spanish girls. All have "Super Big Apple Bottoms!" You don't want to miss out on catalog 18 and 19. **ALWAYS SEND AN ALTERNATE ADDRESS WITH YOUR ORDER IN CASE YOUR ORDER IS REJECTED. WE WILL SEND IT TO THE STREET ADDRESS THAT YOU PROVIDED US WITH.**
3. If your jail or prison is strict on sexy photos, send \$3.00 along with an S.A.S.E for the get in cat #1. They will let it in and the photos too.
4. Send \$13.00 to get a non nude 10 pic get in set. Make sure to say if you want black or white girls when you want a get in 10 pic set.
5. Send \$20.00 to get the 30 pic get in set and a free get in cat #1. It contains all races wearing bikinis on beaches and beside pools. **Get the all NEW supersized high gloss color VIP catalog #4.** Over thousands to choose from. All Races! Non nude strippers, porn stars, and all!!! Only \$15.00 (Free S/H) Includes 2 free pics. Price on all pics in VIP cat #4 is now **only 75cents each**. Must choose at least 15 pics. And send a S.A.S.E for each envelope. We ship up to 22 pics per envelope. You need to put 2 postage stamps on each envelope.
6. **ALL NUDE CATALOG PACKAGE ONLY \$15.00. Comes with free pics.**
7. Get mail get paid book is still only \$10.00.
8. **We have over 100 10 pic sets of black, white and Asian women in sets of 10 different poses. These are very hot 10 pic sets. Only \$13.00 a set or you can choose 3 sets for \$23.00. The sets can be seen on the back of the price sheets.**
9. **VIP yearly membership is only \$45.00** (see the back of order form for more information).
10. **Send \$5.00 to get one of the hottest all white girls coed catalogs on the market cat#11. It has over 450 to choose from.**
11. **Cat #20 has over 400 sexy white girls** to choose from. Send \$3.00 to get it.
12. The 5 pack has a large selection of ebony women with apple bottoms mixed in with Asian and white women. It's hot!! Send only \$7.00. It comes with 2 free pics. It has hundreds to choose from.
13. **50 PICS OF HOT NON NUDE WITH THE BEST QUALITY ASIANS WEARING LINGERIE AND BIKINIS FOR ONLY \$25.00 FREE SHIPPING.**
14. **VOL#1. 50 PICS OF HOT NON NUDE BEST QUALITY MIXED SET OF WHITE, BLACK AND SPANISH GIRLS AND PORN STARS WEARING STRIPPER OUTFITS ONLY \$25.00 FREE SHIPPING.**
15. **VOL#2, 3, 4, AND 5 HAVE 50 PIC SETS OF WHITE, BLACK, AND LATIN GIRLS EACH 50 PIC SET IS ONLY \$25.00 FREE SHIPPING.**
16. **BUY ALL 5 GRAB BAGS AND GET VIP CAT 4 FOR FREE!!**
17. **WE HAVE ALL NUDE 50 PIC GRAB BAG SETS EACH SET HAS A MIX OF RACES. THEY ARE ONLY \$25.00 A SET. FREE SHIPPING! THERE ARE A TOTAL OF 10 SETS. VOL#1-10. BUY ALL 10 NUDE SETS AND GET 50 FREE SHOTS!**

**PLEASE MAKE ALL PAYMENTS TO  
FIYA GIRLS  
P.O. BOX 2545 DEPT-PN  
HOUMA, LA 70361**

TO GET LISTED ON THE LOVEAPRISONER.COM WEBSITE, SEND \$3.00 FOR ALL INFO TO RECEIVE A BROCHURE AND INFO ON THE PHOTO SERVICES PROVIDED BY LOVEAPRISONER.COM. SEND \$25.00 ALONG WITH YOUR PIC AND A 250 WORD BIO TO GET A BROCHURE AND GET POSTED ON THE LOVEAPRISONER.COM WEB SITE FOR ONE YEAR. MAKE ALL PAYMENTS TO:

LOVEAPRISONER.COM P.O. BOX 5563 THIBODAUX, LA 70302

## States Adopt Sentencing Changes Following Supreme Court Ruling on Juvenile Lifers

**A**WAVE OF LEGAL MANEUVERING IS sweeping across the nation due to a deeply divided U.S. Supreme Court decision regarding juveniles serving mandatory sentences of life without parole, and a number of states have taken action as a result of the ruling.

The high court held in June 2012 that mandatory life-without-parole sentences for juveniles convicted of murder violate the Eighth Amendment's ban on cruel and unusual punishment. The 5-4 decision in *Miller v. Alabama*, 132 S.Ct. 2455 (2012) overturned life sentences imposed on two defendants who were 14 years old at the time they were convicted of murder.

The Supreme Court found that juvenile defendants can not be treated the same as adults for sentencing purposes because they are cognitively different, citing their “immaturity, impetuosity, and failure to appreciate risks and consequences.” The ruling was expected to affect around 2,000 prisoners nationwide.

Just weeks after the *Miller* decision, Iowa Governor Terry Branstad announced that he would commute life-without-parole sentences for 38 Iowa juvenile lifers, only to make them ineligible for parole until they have served at least 60 years in prison.

“Justice,” Branstad said, “is a balance, and these commutations ensure that justice is balanced with punishment for those vicious crimes and taking into account public safety.”

However, an Iowa district court overturned the governor's commutation in the first legal challenge filed by one of the affected prisoners. After hearing testimony in

the case of Jeffrey K. Ragland, 44, who was 17 years old when sentenced to life without parole, the court held that Governor Branstad had exceeded his authority because his commutation did not allow for the individualized sentencing required by *Miller*, thus depriving Ragland of a meaningful opportunity to demonstrate his maturity and potential for rehabilitation.

The district court then re-sentenced Ragland to life with the possibility of parole after 25 years, making him immediately eligible for parole. The court also affirmed that a sentence of life without parole was cruel and unusual punishment as applied to Ragland, and criticized Branstad's commutation as being outside the intent of state law, which makes juveniles convicted of Class A felonies eligible for parole after 25 years.

The state challenged the re-sentencing order, but the Iowa Supreme Court affirmed the district court in August 2013 and pulled no punches in condemning Governor Branstad's actions.

“The sentence served by Ragland, as commuted, still amounts to cruel and unusual punishment under the Eighth Amendment to the United States Constitution and Article I, Section 17 of the Iowa Constitution,” the state Supreme Court held. “Consequently, the district court properly resentenced Ragland.”

Supreme Court Justice David Wiggins took further aim at Branstad: “In this situation, is the Governor commuting a void sentence or sentencing the defendant for the first time in violation of the separation of powers doctrine?” he asked in a concurring opinion.

“Another observation is that the Governor’s imposition of a sentence might constitute a denial of due process – such as the right to present evidence at the sentence stage ... or the right to be informed of accusations, the right to a jury trial, the right to compulsory process, and the right to counsel under ... the Iowa Constitution,” Wiggins continued. See: *State v. Ragland*, 836 N.W.2d 107 (Iowa 2013).

In a separate ruling, the Iowa Supreme Court held that a 75-year sentence imposed on a juvenile defendant convicted of murder was subject to the limitations of *Miller*, even though it was not a sentence of life

without parole.

“We conclude that *Miller’s* principles are fully applicable to a lengthy term-of-years sentence as was imposed in this case because an offender sentenced to a lengthy term-of-years sentence should not be worse off than an offender sentenced to life in prison without parole who has the benefit of an individualized hearing under *Miller*,” the Court wrote. See: *State v. Null*, 836 N.W.2d 41 (Iowa 2013).

Further, in a third case, the state Supreme Court found that *Miller* should be applied to a juvenile defendant sentenced to a mandatory fixed-term sentence in a non-homicide case. See: *State v. Pearson*, 836 N.W.2d 88 (Iowa 2013).

In *Miller*, the Supreme Court held that all pertinent factors, including age, education, life experiences and home environment, must be considered when judges impose sentences on defendants convicted of committing murder as juveniles.

Stephen Bright, director of the Southern Center for Human Rights and an instructor at Yale Law School, said at the very least, Branstad's decision to issue commutations mandating 60-year sentences was poor public policy.

“The main point of the *Miller* decision – and the main concern of any sentencing – should be individualized sentencing based on factors about each human being,” Bright said. “Obviously, nothing about any of the 38 individuals [Iowa prisoners convicted of murder as juveniles] was taken into account, just as it was not when they were sentenced to life imprisonment without parole.”

One of the Iowa lifers to have their sentences commuted, David Epps, was convicted of a burglary-murder when he was 16. Due to Branstad's commutation imposing a 60-year sentence, Epps, now 48, would not be eligible for parole until his mid-70s.

"I was thinking he was going to get some kind of release because he served 32 years on a life sentence," said David's brother, Dennis Epps. "[Branstad] might as well have left them serving a life sentence, because that's pretty much what that is."

Meanwhile, the ACLU announced its opposition to three bills introduced in the Iowa legislature in support of the governor's commutations. All three would allow

\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$  
**\$ FREE Pen-Pal Success Catalog** \$  
 \$ for more info send SASE to: \$  
 \$ Superior Enterprises, Dept. JK \$  
 \$ 1247 Pondview Ave. \$  
 \$ Akron, OH 44305-3340 \$  
**\$ Millionaire Prisoner Newsletter** \$  
 \$ for sample copy send \$  
 \$ \$3 or 7 F/C "Forever" Stamps \$  
 \$ to address above! \$  
 \$ (Sorry - No IL Prisoners) \$  
 \$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$



judges to sentence juveniles convicted of first-degree murder to life without parole, or – at the judge’s discretion – to a mandatory minimum sentence that critics argue would not provide such offenders with a meaningful second chance.

The mandatory minimum sentence varies with the proposed legislation; a Senate bill (SSB 1089) would require a 45-year minimum, while in the House, one measure (HSB 105) proposes 50 years and a second (HSB 33) proposes 60 years. Juveniles convicted of murder in Iowa can still be sentenced to life without parole based on an individual determination by the trial court.

Juvenile lifers are facing similar situations in several other states, according to Drexel University law professor Dan Filler, who said the *Miller* ruling did not make clear whether it is to be applied retroactively to prisoners convicted as juveniles who are already serving life-without-parole sentences.

“When you look at the decision closely, it implicitly leaves room for exactly what the governor of Iowa did,” said Filler. “It doesn’t give us any guidance. You have to see this decision as entirely cloudy. Different states are going to do different things.”

Around half the states currently allow life-without-parole sentences for juveniles.

In Florida, the courts have done effectively the same thing as Governor Branstad in response to *Miller*. In some cases, Florida judges have re-sentenced juvenile lifers to 70- to 90-year prison terms. Michigan has

adopted a similar response, with courts imposing sentences of 25 to 60 years rather than mandatory sentences of life without parole – although prosecutors can still request life sentences.

In Alabama, where the *Miller* case originated, state officials remain defiant.

“It is the [Alabama] Attorney General’s position that this rule does not apply retroactively,” said John C. Neiman Jr., the state’s solicitor general. “Ultimately, whether it will apply retroactively is going to be a question that will be litigated in, and decided by, the courts.”

Some states, however, have taken action in the spirit of the Supreme Court’s decision in *Miller*, and five have abolished life-without-parole sentences for all juvenile offenders.

In North Carolina, juvenile lifers are now eligible for parole review after serving 25 years following a statutory amendment that also requires judges to consider factors such as their age, immaturity, intellectual capacity, mental health history and the influence of familial or peer pressure when imposing sentences.

Texas’ highest court for criminal cases, the Texas Court of Criminal Appeals, held on March 12, 2014 that *Miller* applied retroactively to juveniles convicted of murder and sentenced to mandatory life without parole. The Court noted that judges must consider “how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” See: *Ex parte Maxwell*, 2014 Tex. Crim. App. LEXIS 264 (Tex. Crim. App. 2014).

Similarly, the Illinois Supreme Court held in March 2014 that *Miller* is to be applied retroactively – a decision that will affect around 100 Illinois prisoners currently serving life without parole. See: *People v. Davis*, 2014 IL 115595 (Ill. 2014).

On March 28, 2014, West Virginia Governor Earl Ray Tomblin signed a bill that ensures juveniles sentenced as adults will be eligible for parole after 15 years, including those serving life sentences. The legislation also requires courts to consider more than a dozen factors when sentencing juveniles convicted of serious crimes, including their age, family background and likelihood of rehabilitation.

Washington state recently abolished life-without-parole sentences for juvenile offenders under age 16, and made such sentences discretionary for 16- and 17-year-olds. The change will be applied retroactively to prisoners serving life without parole and life-equivalent sentences who were convicted as juveniles.

In Pennsylvania, however, the state Supreme Court has held that *Miller* does not apply retroactively – a ruling that affects about 450 prisoners serving mandatory life sentences for crimes committed as juveniles. Pennsylvania has more juvenile lifers than any other state. See: *Commonwealth v. Cunningham*, 81 A.3d 1 (Pa. 2013). ■

Sources: [www.motherjones.com](http://www.motherjones.com), [www.korg.com](http://www.korg.com), [www.bleedingheartland.com](http://www.bleedingheartland.com), [www.aclu-ia.org](http://www.aclu-ia.org), [www.mlive.com](http://www.mlive.com), *The Morning Call*, [www.fairsentencingofyouth.org](http://www.fairsentencingofyouth.org)

#### LAW OFFICES OF

### ELMER ROBERT KEACH, III



Law Offices of Elmer Robert Keach, III, PC  
One Pine West Plaza, Suite 109  
Washington Avenue Extension  
Albany, NY 12205-5531  
518.434.1718  
[www.keachlawfirm.com](http://www.keachlawfirm.com)

Attorney Bob Keach  
NITA Master Advocate  
Member, Multi-Million Dollar Advocates Forum  
Outside Counsel, Prison Legal News  
National Practice

#### Experienced Civil Rights Attorney dedicated to seeking justice for those who are incarcerated

*Custodial Death Cases • Wrongful Arrest and Incarceration*  
*Medical Indifference Cases • Corrections and Police Brutality*  
*Sexual Abuse and Assault • Illegal Strip Searches*  
*Class Actions • First Amendment Litigation (Northeast Only)*

Reasonable Hourly Rates for: Criminal Defense, Appeals,  
Post-Conviction Relief, Habeas Corpus

#### WHEN YOU OR A LOVED ONE HAVE BEEN WRONGED, YOU HAVE A VOICE.

Attorney Keach prefers all inquiries by mail to be typed, and limited to five pages.  
DO NOT SEND ORIGINAL DOCUMENTS OR ORIGINAL MEDICAL RECORDS.  
Make sure to exhaust your administrative remedies and comply with state law notice requirements, if applicable, to preserve state law intentional tort/negligence claims.

## Reports on Elderly Prisoners Spur Call for Reforms

**A**N INCREASING NUMBER OF ADVOCACY groups are calling for reforms in the wake of three reports that found the nation's aging prison population is reaching record levels at growing expense to taxpayers, mostly due to the high cost of medical care for geriatric prisoners.

The studies noted that the vast majority of elderly prisoners pose a low risk of reoffending but were caught in the peak years of "get tough on crime" sentencing during the 1980s and '90s. As a result, more prisoners are growing older in prison. [See: *PLN*, Dec. 2010, p.1].

An October 2013 report by The Pew Charitable Trusts identified the aging prison population as the primary factor behind a median 52% jump in prisoner healthcare spending in 42 states between 2001 and 2008.

"Health care is consuming a growing share of state budgets, and corrections departments are not immune to this trend," said Maria Schiff, who heads the State Health Care Spending Project, an initiative of The Pew Charitable Trusts and

the John D. and Catherine T. MacArthur Foundation.

The Pew report analyzed data on prison healthcare spending collected from 44 states by the U.S. Department of Justice. Those states spent \$6.5 billion on prisoner healthcare in 2008 – a \$2.3 billion increase compared to 2001. During the same time period, healthcare spending per prisoner also increased in 35 of the states.

The study reported a 94% increase in the number of state and federal prisoners age 55 and older during the seven-year period. Healthcare costs for older prisoners with chronic illnesses were an average of two to three times higher than the cost for younger prisoners, the report stated.

The Pew findings echo those of a June 2012 report by the American Civil Liberties Union, which found that of the nation's 1.5 million state and federal prisoners, around 246,600 were age 50 and over – about 16% of the overall prison population. The National Institute of Corrections (NIC) classifies prisoners over 50 as "aging" due to the stress of incarceration and typical lack of appropriate healthcare prior to and during incarceration. [See: *PLN*, April 2013, p.24].

The cost of keeping aging prisoners behind bars? An estimated \$16 billion per year, including \$3 billion in medical care, according to the ACLU.

"The number of elderly prisoners has absolutely exploded," stated Inimai Chettiar, who co-authored the ACLU report. Chettiar is a director at the Brennan Center for Justice at the NYU School of Law. She said by the year 2030, nearly a third of the entire prison population in the U.S. – upwards of 400,000 prisoners – will be elderly.

"Our extreme sentencing policies and a growing number of life sentences have effectively turned many of our correctional facilities into veritable nursing homes – and taxpayers are paying for it," the study noted.

"Incarceration is expensive," said David Fathi, who heads the ACLU's National Prison Project, "and incarcerating the elderly is extraordinarily expensive."

While it costs taxpayers approximately \$34,100 per year on average to incarcerate a prisoner, it costs twice as much – \$68,270 per year – to care for elderly prisoners. That is a major reason for state corrections

spending growing by 674% over the last 25 years, the ACLU study determined. [See: *PLN*, Nov. 2012, p.22].

A 2012 report by Human Rights Watch reached similar conclusions. For example, in Georgia, the report said, the annual average cost of medical care for elderly prisoners was \$8,565 compared to an annual average cost of just \$961 for prisoners under age 65. In Michigan, the report documented healthcare for prisoners age 80 and older as high as \$40,000 each.

The ACLU study identified five states with the highest percentages of aging prisoners: West Virginia (20%), New Hampshire (20%), Massachusetts (19%), Florida (18%) and Texas (18%). In fact, the report said, California, Texas and Florida combined accounted for 43% of the nation's entire elderly prison population.

Some older prisoners are serving short sentences for nonviolent crimes such as burglary or drug possession, the ACLU found; many are repeat offenders caught in the "revolving door" of the criminal justice system. Increasingly, the aging prison population is comprised of offenders who received long sentences for nonviolent crimes and are thus remaining in prison into their old age.

From 1986 to 1995, what the ACLU calls "the apex of the tough-on-crime period" of the U.S. criminal justice system, the number of prisoners sentenced to 20 or more years more than tripled, while from 1984 to 2002, life sentences – with or without parole – more than quadrupled.

"When you have people serving life sentences, they're going to die in prison, just like people serving 20-, 30- and 40-year sentences are inevitably going to grow old behind bars," noted Jamie Fellner, senior advisor of the U.S. Program at Human Rights Watch, in an interview with *IPS News*.

The majority of aging prisoners, according to the ACLU, are not serving time for murder. About 65% of Texas' elderly prisoners, for example, were incarcerated for drug and property offenses and other nonviolent crimes. In North Carolina, 26% of prisoners age 50 and over were incarcerated under habitual offender laws or for drug crimes, while another 14% were in prison for fraud, larceny, and traffic and public order offenses.



### Save on Prescription Eyeglasses & Shades

Send for a **FREE** Catalog  
Money Back Guarantee

**Prism Optical, Inc.**  
10954 NW 7th Ave  
Dept: LN0514  
Miami, FL 33168

Inquiries from Friends  
and Family Welcome  
1-800-637-4104  
www.prismoptical.com  
contact@prismoptical.com



“Many individuals who would have been sentenced to shorter periods of incarceration for repeat crimes before 1979 are now caught in the net of later-enacted habitual offender laws and given punishments of 20 years or more,” the ACLU report observed.

While the ballooning expense of caring for a geriatric prison population has state and federal prison officials searching for ways to cope with the problems of providing—and paying for—healthcare for elderly prisoners, the ACLU and other advocacy groups have proposed alternatives to solve the growing dilemma.

Research has shown that by age 50, people are far less likely to commit crimes. Arrest rates are just over 2% at age 50 and almost nil at age 65. Prisoners age 50 or older are far less likely to recidivate than younger offenders. In New York, for example, only 7% of ex-offenders age 50 to 64 return to prison for new convictions. In Virginia, only 1.3% of ex-offenders over 55 committed new crimes and were reincarcerated.

“The risk of re-offense is much lower” after age 50, said Fathi. “Elderly prisoners are generally past their crime-prone years.”

Fellner agreed, stating in an August 18, 2013 editorial in *The New York Times*, “Those who are bedridden or in wheelchairs are not likely to go on crime sprees.”

She added, “It is worth asking: What do we as a society get from keeping these people in prison? People like the 87-year-

old I met who had an ‘L’ painted on his left shoe and an ‘R’ on his right so he would know which was which and who didn’t even seem to know he was in prison. Or the old men I watched play bingo in a prison day room who needed staff members to put the markers on the bingo cards for them.”

The ACLU report recommended that parole boards grant conditional releases to elderly prisoners, using a “peer-reviewed, evidence-based risk assessment” to determine whether they pose a substantial risk to public safety. States should also “utilize and expand” medical parole, which usually requires prisoners to be terminally ill or physically incapacitated to be considered for release. While many states provide for medical parole, also known as compassionate release, they are rarely granted. [See: *PLN*, Feb. 2014, p.30; Jan. 2013, p.22; March 2012, p.12; Feb. 2012, p.16].

In one small step towards reform, U.S. Attorney General Eric Holder announced on August 12, 2013 that the Bureau of Prisons would institute new compassionate release policies for federal prisoners. Under the revised policies, elderly and infirm prisoners who have served a significant portion of their sentences, and who pose no danger to society, would be eligible for early release.

However, such measures have sparked resistance from victims’ rights advocates. “There are many criminals, especially violent criminals, for whom recidivism rates are very high and the propensity for reoffending

is very high,” stated Kristy Dyroff, a spokeswoman for the National Organization for Victim Assistance.

“Our first priority is that victims are protected. It may be reasonable for a non-violent offender to be paroled,” Dyroff said, “but when there’s a possibility of violent re-offense, then we don’t support that.”

Beyond expanding the use of medical parole and compassionate release, more systemic reforms that would reduce the number of elderly prisoners include the repeal of mandatory minimum sentencing laws, habitual offender statutes and so-called truth-in-sentencing laws that require offenders to serve lengthy prison terms, the ACLU report concluded.

Several advocacy organizations have formed specifically to address issues related to elderly prisoners, such as Release Aging People in Prison, which focuses on older prisoners in New York, and the Project for Older Prisoners (POPS) at the George Washington University in Washington, D.C. ■

Sources: “*Managing Prison Health Care Spending*,” *The Pew Charitable Trusts* (Oct. 2013); “*At America’s Expense: The Mass Incarceration of the Elderly*,” *American Civil Liberties Union* (June 2012); “*Old Behind Bars: The Aging Prison Population in the United States*,” *Human Rights Watch* (Jan. 2012); [www.usnews.nbcnews.com](http://www.usnews.nbcnews.com); *The New York Times*; [www.truth-out.org](http://www.truth-out.org); <http://nationinside.org/campaign/release-of-aging-people-in-prison>

## Support Prison Legal News with these beautiful gifts!

CALL **561-360-2523**, MAIL ORDER OR USE WEB FORM  
[HTTP://WWW.PRISONLEGALNEWS.ORG/](http://WWW.PRISONLEGALNEWS.ORG/)



## Hand Embroidered Greeting Cards



Made by women prisoners in Cochabamba, Bolivia. Each card is individually made, no two are identical. The prisoners are paid a fair wage for each card and keep 100% of the pay to support themselves and their families. Local fair trade non-profits in Bolivia supply the materials for the cards. **\$6.**

**Hand Made Hemp Tote Bag** All natural hemp tote bag hand made in Vermont with the Prison Legal News logo on both sides, in red and black. Great for carrying books, groceries, and more! Stamped on the inside that no sweatshop, prison or child labor was used in its manufacture. **\$12.**

\$6 shipping and handling for orders under \$50.



# Idaho Supreme Court Vacates Summary Judgment for Pepper Spray Manufacturer

by Mark Wilson

ON AUGUST 27, 2013, IDAHO'S Supreme Court held that a lower state court improperly granted summary judgment to a pepper spray manufacturer on a prison guard's product liability and inadequate warning label claims.

While on light duty for bronchitis, Idaho prison guard Billie Jo Major participated in a March 3, 2008 training exercise that required her to enter a cell that had been sprayed with bursts of oleoresin capsicum (OC) from an MK-9 Fogger manufactured by Security Equipment Corporation (SEC). "The MK-9 Fogger produces a widely dispersed aerosol designed to irritate and inflame the respiratory tract."

Major alleged her respiratory problems worsened due to her exposure to the OC spray; she developed a chronic cough and claimed that "her health issues prevented her from working, caring for herself, or engaging in other activities."

Major sued SEC in Ada County district court, claiming that the MK-9 Fogger was unreasonably dangerous and had inadequate warning labels and instructions.

The district court granted summary judgment to SEC, finding that "Major failed to show a genuine issue of fact regarding chronic injury that resulted from exposure to the pepper spray," and that the MK-9 Fogger's "warning label provided an adequate notice to Major regarding the acute effects of the spray." The court also struck an affidavit from Major's expert witness as a sham affidavit because it contradicted his deposition

testimony without explanation.

The Idaho Supreme Court reversed the grant of summary judgment on both the causation and inadequate warning label issues, finding material facts in dispute and holding "the district court improperly granted summary judgment to SEC on whether the company had a duty to warn Major of possible chronic injury."

The Supreme Court also reversed the district court's sham affidavit order, noting

that credibility issues may not be resolved on a motion for summary judgment and that the Court had "never adopted the sham affidavit doctrine." Since "a sham affidavit finding necessarily turns on a credibility finding as well as a finding of bad faith," the Court held that was "beyond the power of the trial courts at the summary judgment phase." See: *Major v. Security Equipment Corporation*, 307 P.3d 1225 (Idaho 2013).

## No "Reasonable Efforts" to Reunite Oregon Sex Offender with His Son

by Mark Wilson

THE OREGON COURT OF APPEALS HELD on July 3, 2013 that a juvenile court improperly assessed whether the Department of Human Services (DHS) had made reasonable efforts to reunite an incarcerated sex offender with his minor son.

At the time, DHS maintained custody of a child identified as R.W., who was born in 2007. His father, M.K., sentenced to prison for sex offenses involving a 15-year-old girl, was not scheduled for release until November 2013. M.K. participated in a parenting course and other programs while incarcerated.

Pursuant to ORS § 419B.476, at a juvenile court permanency hearing the court must "determine whether [DHS] has made reasonable efforts ... and whether the parent has made sufficient progress to make it pos-

sible for the ward to safely return home."

At an October 2012 permanency hearing, a DHS caseworker testified that the department wanted M.K. to visit with R.W., but required the father to complete a psychosexual evaluation to determine whether he could safely visit his son, in prison or following release, before approving visitation.

The caseworker noted that M.K. had not been evaluated but said she had located a doctor willing to perform the evaluation at the prison. However, the doctor's fee was "\$5,000 to perform the psychosexual evaluation while [the] father was incarcerated, in comparison to the 'less than \$1,000' that DHS usually would pay for such an evaluation."

The juvenile court held that DHS was

<p><b>INMATE SHOPPER</b> 2014 READERS CHOICE RESULTS</p> <p>OVER 1000 PRISONER RESOURCES FREE ADS 100 Non Profit Orgs 100 Newspapers 100 Contests 100 Best Sellers</p> <p>AMERICAN PRISON PRINTER &amp; UP TO DATE GUIDE FOR INMATE SERVICES</p>	<p>100 Non Nude Girls 50 Pen Pal Resources 80 Gift Shops 63 Catalogs to Order 34 Sexy Photo Sellers 14 Typist 22 Personal Assistants 15 Magazine Sellers 5 Publishing Services 60 Contest for Writers &amp; Artists</p> <p>Now You May Order The New <b>Censored Edition</b> Without Pen Pal Content &amp; No Sexy Girls - No More Rejections</p>	<p><b>INMATE SHOPPER</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> Send Me the CURRENT ISSUE Inmate Shopper: \$17.99 + \$7.00 Priority Shipping</li><li><input type="checkbox"/> Send Me the NEXT ISSUE Inmate Shopper: <input type="checkbox"/> March <input type="checkbox"/> July <input type="checkbox"/> Nov/Holiday</li><li><input type="checkbox"/> Send Me the CENSORED ISSUE Inmate Shopper</li><li><input type="checkbox"/> Send Me THE BEST 500 NON PROFIT ORGS: \$14.98 + \$4.00 Shipping w/tracking</li></ul> <p>Freebird Publishers Box 541, North Dighton, MA 02764 <a href="http://www.FreebirdPublishers.com">www.FreebirdPublishers.com</a></p>	<p>Legal: Innocence Legal Family Law Legal Children's Legal Research Civil Rights Health &amp; Health Care Sentencing Issues Veterans Issues Voting Right Women's Issues Release &amp; Re-entry Jailhouse Lawyers Newsletters-Books Free Services &amp; Products &amp; much more</p>	<p><b>THE BEST 500</b> NONPROFIT ORGANIZATIONS FOR PRISONERS And Their Families</p> <p>America's Only Up to Date Publication on Nonprofits - Big for Prisoners</p> <p><b>FIND WHAT YOU NEED FAST</b> WITH OUR EXCLUSIVE CROSS-REFERENCE INDEX</p> <p>Legal Services Medical Education Food Religious Financial Mental</p> <p>Relief &amp; Aid Legal &amp; Advocacy You Pay You Save US Shipping Locality Based and Online</p> <p>THE BEST FOR DEPT OF SPANISH SPEAKING</p> <p>8 WEEKS WITH NO COST \$14.98</p> <p>Support By Google Reader Internet &amp; Email No Shipping</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



not required to pay \$5,000 to have M.K. evaluated and found that DHS had made reasonable efforts to reunite R.W. with M.K. "Reasonable efforts do not require [DHS] to offer [the father] a psychosexual evaluation while he is in prison if the cost is \$5,000," the court found. Ultimately, the juvenile court concluded that M.K. had not made sufficient progress toward reunification with his son because he "is a sex offender and needs a psychosexual examination to determine whether he presents a danger" to R.W.

The Court of Appeals reversed, holding that the juvenile court failed to consider the totality of the circumstances in making its reasonable efforts determination.

"Put bluntly," the appellate court held, "when a parent contends that DHS's efforts have not been reasonable because the agency has declined to provide a particular service, the court's 'reasonable efforts' determination should include something resembling a cost-benefit analysis, at least when ... the agency itself has deemed that service to be 'key' to the reunification plan."

Such an analysis was not conducted by the juvenile court. Rather, it "appears to have considered only the cost of performing the psychosexual evaluation while the father is incarcerated," the Court of Appeals found. "Given the importance of the psychosexual evaluation to the reunification plan, the juvenile court should have considered the extent to which the family might benefit if

[the] father received a psychosexual evaluation promptly, instead of waiting a year to be evaluated after his release." The juvenile

court's ruling was reversed. See: *DHS v. M.K. (In re R.W.)*, 257 Ore. App. 409 (Or. Ct. App. 2013). ■

## Pennsylvania Warrantless, Suspicionless Search Probation Condition Held Invalid

by Mark Wilson

**T**HE PENNSYLVANIA SUPREME COURT held that a condition of probation authorizing warrantless, suspicionless searches of a probationer's home was invalid, and remanded the case for resentencing.

On September 1, 2007, Philadelphia police witnessed David A. Wilson point a handgun at a driver in a parked car. He was arrested on gun and drug charges and tried in the Philadelphia Gun Court – a specialized court within the Court of Common Pleas.

Wilson was convicted and sentenced to 30-60 months in prison and a 36-month term of probation. "The trial court emphasized that there was no stricter probation than Gun Court probation." As a condition of probation, the court authorized warrantless, suspicionless searches of Wilson's residence for prohibited weapons.

The trial court rejected Wilson's objection to the search condition but a panel of the Superior Court later vacated the condition. On *en banc* review, however, the Superior Court reversed itself and

affirmed "the search condition as it applied to the probationary sentence, but vacated the condition as it applied to 'the state parole aspect of the sentence.'" See: *Commonwealth v. Wilson*, 11 A.3d 519 (Pa Super. 2010).

The Supreme Court reversed, holding that "sentencing courts are not empowered to direct that a probation officer may conduct warrantless, suspicionless searches of a probationer as a condition of probation." As such, the Supreme Court found that the search condition of Wilson's probation violated 42 Pa.C.S. § 9912(d)(2), and remanded the case for resentencing.

The Court rejected Wilson's request to merely strike the search condition, because the trial court "made clear that it viewed the warrantless, suspicionless search condition of probation to be an integral part of the sentencing scheme." Therefore, "striking the condition, without remanding for resentencing, would be improper." See: *Commonwealth of Pennsylvania v. Wilson*, 67 A.3d 736 (Pa. 2013). ■

### Corcoran Sun

Full Color Prison Yard Monthly  
News ♦ Entertainment ♦ Resources

**3 Month Special Subscription**

**\$5 or 20 FCS Stamps**



#### COLOR NEW 18 PAGES

Expanded full color format with exciting episodes of thrilling novels and sexy pics. Many how-to articles on writing, art and health. Filled with entertainment: puzzles, trivia, jokes, poetry... Submit your writing, art, poetry etc. See your submission, name and contact info in print.

**Special 6-Issue Subscription (\$10 or 40 FCS stamps)**

**Special Year Subscription (\$20 or 80 FCS stamps)**

Payments to: Freebird Publishers  
Box 541- Dept. BK, North Dighton, MA 02764  
[www.FreebirdPublishers.com](http://www.FreebirdPublishers.com)  
[Diane@FreebirdPublishers.com](mailto:Diane@FreebirdPublishers.com)

### BATTLING THE ADMINISTRATION

An Inmate's Guide to a Successful Lawsuit



Written from a prisoner's perspective, this book is excellent for both the first-time litigant and the old hand, a practical guide for navigating the strange world of prisoner's rights.

- ⇒ Guidance on how to get organized
- ⇒ Tips for investigating and building a case
- ⇒ Spelling and Grammar refresher
- ⇒ Detailed overview of the legal system
- ⇒ Sample complaint and other forms
- ⇒ Covers court rules, evidence, and exhibits
- ⇒ Details on hearing and trial practice
- ⇒ Comprehensive summary of prisoner's rights
- ⇒ Hundreds of citations to controlling case law

#### Battling The Administration

by, David J. Meister

ISBN: 9781940638034 555 pages

Send check or money order to:

**Wynword Press**

P.O. Box 557

**Bonnors Ferry, ID 83805**

Include your full Name, DOC#, Institution name and your complete address.

Order online at: [www.wynwordpress.com](http://www.wynwordpress.com)

**Tel(208)267-0817**

**\$34.95**

**Price includes shipping**

# Lawsuit Against Missouri Jail Proceeds as Two Guards Plead Guilty

**A**TTORNEYS REPRESENTING CURRENT and former prisoners at the city workhouse in St. Louis, Missouri are moving forward with a federal lawsuit that alleges cruel and unusual punishment at the jail, including guards forcing prisoners to take part in “gladiator-style” fights.

On November 14, 2013, a motion to certify the case as a class-action was filed in the U.S. District Court for the Eastern District of Missouri.

The motion followed guilty pleas entered in August 2013 by two workhouse guards who had been accused of forcing prisoners to fight each other. The guards, Elvis M. Howard, 34, and Dexter Brinson, 46, pleaded guilty to charges of assault and obstruction of government operations. In addition, Howard pled guilty to burglary.

The American Civil Liberties Union (ACLU) and other groups have complained for years about abuses in St. Louis’ jail system, according to Daniel Brown, one of the attorneys representing the prisoners in the federal lawsuit.

As far back as 2009, the ACLU of Missouri had released a report critical of conditions at the workhouse, citing assaults and cover-ups, and in August 2012 the organization called for an independent committee to provide oversight at the jail.

“What was happening was the guards were actually taking inmates out of the cells, placing them in cells with other inmates and forcing them to fight each other,” Brown said.

Guards allegedly bet on the fights, one of which reportedly involved a prisoner on suicide watch. Prisoners were sometimes offered incentives to battle each other, such as extra food, or were threatened with violence if they did not participate.

Brown noted the guilty pleas entered by the two jail guards proved the validity of the lawsuit, which was filed in August 2012 against the guards, the City of St. Louis and the St. Louis Department of Corrections. He also predicted that the scope of the suit would widen.

“Now that the guards have pled guilty, it’s no longer an allegation – it’s a fact,” Brown said. “We believe these aren’t the only two guards who did this.”

Howard and Brinson were arrested

after they were observed on jail security cameras letting prisoner Thaddeus Dumas into prisoner Derrick Rodgers’ cell to watch them fight. In court pleadings, Dumas claimed that he was repeatedly threatened by guards and ordered to assault other prisoners.

The lawsuit, which seeks \$150 million, originally named seven plaintiffs but grew to include 45-50 current and former prisoners after the attorneys for Dumas and Rodgers spoke with Paul Sims, a lawyer representing other prisoners at the workhouse. Those prisoners reported similar incidents that resulted in serious injuries, including a broken jaw, and claimed they were denied medical care.

“We believe once we are successful, we will be able to make a change in the way business is being done at the workhouse,” said Sims, who became the fourth attorney on the legal team representing the prisoners.

“We are looking for reform in the justice system and workhouse,” attorney Ryan Smith stated. “We mean the court to dictate to the city how these institutions should be run because obviously they don’t have it within themselves to run the facilities in a proper manner.”

The lawsuit also seeks changes in the way prisoners file complaints at the workhouse; currently, grievances are filed with the guards themselves.

“The complainers are complaining to the violators,” Smith said.

Howard and Brinson both received suspended sentences and were placed on probation; Howard was sentenced to three-and-a-half years while Brinson received four years. The charges of assault in the third degree and obstruction of government operations were both misdemeanors, while Howard’s charge of burglary in the first degree was a felony.

The federal lawsuit alleging constitutional violations at the St. Louis workhouse remains pending. See: *Rodgers v. Brinson*, U.S.D.C. (E.D. Mo.), Case No. 4:12-cv-01482-JCH.

In a related matter, St. Louis officials agreed to pay \$1,384.50 to the ACLU of Missouri to settle a lawsuit accusing the city of failing to comply with a public records request concerning conditions at the jail.

On September 27, 2011, the ACLU had requested “any and all records relating to [the] inmate grievance process” from the city’s corrections department. A month later the ACLU was informed that a reply to its Sunshine Law request would be forthcoming in a few days; however, another month passed without any documents or other reply, and the ACLU filed suit.

“Our request for public records was – it wasn’t refused, it was ignored,” said Tony Rotherth, the ACLU’s legal director.

The request for documents was part of the ACLU’s investigation into complaints of neglect, abuse and poor conditions in the workhouse. At the time, the organization was working with then-Corrections Commissioner Gene Stubblefield to look into mismanagement and understaffing at the jail.

A series of escapes led to Stubblefield’s suspension in September 2011 and he was subsequently fired, ending the collaboration. In February 2014, Stubblefield filed a federal lawsuit against the city claiming that he was wrongly accused of misconduct and had been wrongfully terminated due to racial discrimination.

The ACLU received the documents it had requested shortly after filing suit. “After we filed the lawsuit, ... the city promptly owned up to its errors and gave up the records they had,” said Rotherth. “They are to be commended for owning up to their failure to comply with the Sunshine Law.”

On June 27, 2012, a Missouri state court approved a consent judgment that required the city to pay \$1,148.50 to the ACLU in attorney fees and \$236 in costs in the public records case. “You only get attorney fees and costs if [the violation is] knowing and purposeful,” Rotherth noted. See: *ACLU of Eastern Missouri v. City of St. Louis*, 22<sup>nd</sup> Judicial Circuit Court (MO), Case No. 1222-CC00423. ■

Additional sources: [www.riverfronttimes.com](http://www.riverfronttimes.com), [www.post-dispatch.com](http://www.post-dispatch.com), [www.stlamerican.com](http://www.stlamerican.com), [www.stltoday.com](http://www.stltoday.com)

## Dictionary of the Law

Thousands of clear, concise definitions.  
See page 61 for ordering information.



Stay in touch with a good Magazine!

# Get 5 Full One Year Subscriptions - **ONLY \$20!**

+ \$3.99 p/h  
"BEST DEAL ON THE POUND!"

Check your **5** magazines  
and underline three backup choices (in case of unavailability)

- |                                                             |                                                            |                                                        |
|-------------------------------------------------------------|------------------------------------------------------------|--------------------------------------------------------|
| <input type="checkbox"/> 4 WHEEL DRIVE & SPORT UTILITY (12) | <input type="checkbox"/> FLEX (12)                         | <input type="checkbox"/> PLANE & PILOT (12) NR*        |
| <input type="checkbox"/> ALLURE (12)                        | <input type="checkbox"/> FLORIDA SPORT FISHING (6)         | <input type="checkbox"/> POPULAR PHOTOGRAPHY (12)      |
| <input type="checkbox"/> AMERICAN PHOTO (6)                 | <input type="checkbox"/> FLYING (12)                       | <input type="checkbox"/> POPULAR SCIENCE (12)          |
| <input type="checkbox"/> ARTHRITIS TODAY (6)                | <input type="checkbox"/> FOUR WHEEL & OFF ROAD (12)        | <input type="checkbox"/> PREDATOR EXTREME (6)          |
| <input type="checkbox"/> AUTOMOBILE (12)                    | <input type="checkbox"/> FOUR WHEELER (12)                 | <input type="checkbox"/> PREVENTION (12)               |
| <input type="checkbox"/> BACKPACKER (9)                     | <input type="checkbox"/> FREESKIER (6)                     | <input type="checkbox"/> RED BULLETIN MAGAZINE (12)    |
| <input type="checkbox"/> BETTER HOMES & GARDENS (12)        | <input type="checkbox"/> GLAMOUR (12)                      | <input type="checkbox"/> REDBOOK (12)                  |
| <input type="checkbox"/> BICYCLING (11)                     | <input type="checkbox"/> GOLF DIGEST (12)                  | <input type="checkbox"/> ROAD & TRACK (10)             |
| <input type="checkbox"/> BLACK ENTERPRISE (12)              | <input type="checkbox"/> GOLF TIPS (7)                     | <input type="checkbox"/> SAVEUR (9)                    |
| <input type="checkbox"/> BOATING (10)                       | <input type="checkbox"/> GOLFWEEK (40)                     | <input type="checkbox"/> PARENT & CHILD (8)            |
| <input type="checkbox"/> BON APPETIT (12)                   | <input type="checkbox"/> HARPERS BAZAAR (10)               | <input type="checkbox"/> SELF (12)                     |
| <input type="checkbox"/> BOWHUNT AMERICA (6)                | <input type="checkbox"/> HOT BIKE (12)                     | <input type="checkbox"/> SEVENTEEN (10)                |
| <input type="checkbox"/> BOWHUNTING WORLD (9)               | <input type="checkbox"/> HOT ROD (12)                      | <input type="checkbox"/> SHAPE (12)                    |
| <input type="checkbox"/> BRIDAL GUIDE (6)                   | <input type="checkbox"/> HOUR DETROIT (12)                 | <input type="checkbox"/> SIEMPRE MUJER (6)             |
| <input type="checkbox"/> CABELA'S OUTFITTER JOURNAL (6)     | <input type="checkbox"/> HOUSE BEAUTIFUL (10)              | <input type="checkbox"/> SKI MAGAZINE (6)              |
| <input type="checkbox"/> CAR & DRIVER (12)                  | <input type="checkbox"/> INC (12)                          | <input type="checkbox"/> SLAM (10)                     |
| <input type="checkbox"/> CAR CRAFT (12)                     | <input type="checkbox"/> INSTRUCTOR K - 8 (6)              | <input type="checkbox"/> SNOWBOARD (4)                 |
| <input type="checkbox"/> CBS WATCH! MAGAZINE (6)            | <input type="checkbox"/> ISLANDS MAGAZINE (8)              | <input type="checkbox"/> SNOWBOARDER (6)               |
| <input type="checkbox"/> CHARISMA (12)                      | <input type="checkbox"/> JET (20)                          | <input type="checkbox"/> SPORT RIDER (10)              |
| <input type="checkbox"/> CHEVY HIGH PERFORMANCE (12)        | <input type="checkbox"/> LADIES HOME JOURNAL (10)          | <input type="checkbox"/> SUPER CHEVY (12)              |
| <input type="checkbox"/> CIRCLE TRACK (12)                  | <input type="checkbox"/> LATINA (10)                       | <input type="checkbox"/> SURFER (12)                   |
| <input type="checkbox"/> COMPLEX MAGAZINE (6)               | <input type="checkbox"/> LOG HOME LIVING (9)               | <input type="checkbox"/> TAMPA BAY MAGAZINE (6)        |
| <input type="checkbox"/> CONDE NAST TRAVELER (12)           | <input type="checkbox"/> LUCKY (10)                        | <input type="checkbox"/> TEEN VOGUE (10)               |
| <input type="checkbox"/> CRUISING WORLD (12)                | <input type="checkbox"/> MARIE CLAIRE (12)                 | <input type="checkbox"/> TENNIS (6)                    |
| <input type="checkbox"/> CYCLE WORLD (12)                   | <input type="checkbox"/> MEN'S FITNESS (10)                | <input type="checkbox"/> THE ATLANTIC MONTHLY (10)     |
| <input type="checkbox"/> DETAILS - FASHION (10)             | <input type="checkbox"/> MEN'S JOURNAL (12)                | <input type="checkbox"/> TIMBER HOME LIVING (6)        |
| <input type="checkbox"/> DETROIT HOME (6)                   | <input type="checkbox"/> MIDWEST LIVING (6)                | <input type="checkbox"/> TRANSWORLD MOTOCROSS (12)     |
| <input type="checkbox"/> DIGITAL PHOTO (7)                  | <input type="checkbox"/> MINISTRY TODAY (6)                | <input type="checkbox"/> TRANSWORLD SKATEBOARDING (12) |
| <input type="checkbox"/> DIRT RIDER (12)                    | <input type="checkbox"/> MORE (10)                         | <input type="checkbox"/> TRANSWORLD SNOWBOARDING (8)   |
| <input type="checkbox"/> EBONY (11)                         | <input type="checkbox"/> MOTOR TREND (12)                  | <input type="checkbox"/> TRUCKIN (13)                  |
| <input type="checkbox"/> ELLE DECOR (10)                    | <input type="checkbox"/> MOTORCYCLIST (12)                 | <input type="checkbox"/> UPTOWN (6)                    |
| <input type="checkbox"/> ENTREPRENEUR (12)                  | <input type="checkbox"/> MUSCLE & FITNESS (12)             | <input type="checkbox"/> UPTOWN MAGAZINE (6)           |
| <input type="checkbox"/> ESPN MAGAZINE (26)                 | <input type="checkbox"/> MUSCLE MUSTANGS & FAST FORDS (12) | <input type="checkbox"/> W MAGAZINE (10)               |
| <input type="checkbox"/> ESQUIRE (11)                       | <input type="checkbox"/> NYLON GUYS (6)                    | <input type="checkbox"/> WATERFOWL & RETRIEVER (2)     |
| <input type="checkbox"/> EVERY DAY WITH RACHAEL RAY (10)    | <input type="checkbox"/> NYLON MAGAZINE (10)               | <input type="checkbox"/> WEIGHT WATCHERS (6)           |
| <input type="checkbox"/> FAMILY CIRCLE (12)                 | <input type="checkbox"/> OLD HOUSE JOURNAL (6)             | <input type="checkbox"/> WHITETAIL JOURNAL (6)         |
| <input type="checkbox"/> FAMILY FUN (10)                    | <input type="checkbox"/> OUTDOOR LIFE (12)                 | <input type="checkbox"/> WIRED (12)                    |
| <input type="checkbox"/> FAST COMPANY (10)                  | <input type="checkbox"/> OUTDOOR PHOTOGRAPHER (11) NR*     | <input type="checkbox"/> WORKING MOTHER (6)            |
| <input type="checkbox"/> FIELD & STREAM (12)                | <input type="checkbox"/> OUTSIDE (12)                      | <input type="checkbox"/> YOGA JOURNAL (9)              |
| <input type="checkbox"/> FITNESS (10)                       | <input type="checkbox"/> PARENTS (12)                      |                                                        |

Send as many "5 for \$20" orders as you like!

*"Tell your Friends and Families!"*

Send a copy of this page to us. Please make your address as short as possible. **Current customers - Please update your address!**  
Allow 6-8 weeks for delivery. Pay by check, money order or **order online** and use credit card or PayPal.

Name and Inmate # (please print, maximum 24 characters):													
Address:													
City:						State:				Zip:			

\* No Renewal



## Inmate Magazine Service

P.O. Box 2063, Fort Walton Beach, FL 32549 [www.InmateMagazineService.com](http://www.InmateMagazineService.com)

OK to Copy!

# D.A. Drops Charges Against Oklahoma Parole Board Members

by Christopher Zoukis

**F**IVE MEMBERS OF THE OKLAHOMA Pardon and Parole Board (Board) will not face trial for criminal violations of the state's Open Meeting Act, after signing a statement acknowledging that they had conducted business without listing and publishing it on the agenda of the Board's meetings over a 14-month period.

As previously reported in *PLN*, the five members of the Board had been charged in March 2013 with violating state law by voting on prisoners' early release requests without proper public notice at meetings between May 2011 and July 2012. The Board members included Marc Dreyer, Currie Ballard, Richard L. Dugger, Lynnell Harkins and David Moore. [See: *PLN*, May 2013, p.30].

The Open Meeting Act requires notification of the time and place of meetings of public agencies and of the business that will be considered at the meetings; violations of the law can result in a \$500 fine and up to a year in jail.

When the charges were first announced, Oklahoma City District Attorney David Prater issued a news release alleging that the Board had conducted business in a manner "designed to hide potentially unpopular actions from the citizens it serves." He had previously warned the Board that its actions were "egregious, aggravated, and a clear attempt to operate in secrecy, outside of public scrutiny."

The charges claimed the Board members had expedited the release of prisoners who had not yet served the minimum requirement of their sentences; Prater said the Board illegally placed the names of 50 prisoners on

meeting agendas to consider them for early release. He stated some of the prisoners were convicted of murder, child molestation and other crimes that, by state law, required them to serve a minimum 85% of their sentences. Some were serving life sentences and at least one was serving life without parole.

Before filing charges, Prater had offered the Board members a chance to resign – an offer that was quickly rejected. "I'm not going anywhere," member Currie Ballard said at the time. "Until Jesus Christ calls me home, I'll be on the parole board."

In January 2014, after the Board members signed a one-page statement publicly accepting responsibility for violating state law, Prater said the issue should be settled quickly: "With the board's acknowledgement that their actions violated the Open Meeting Act, I anticipate a resolution of this matter in short order."

The statement maintained that the Board members thought they were doing nothing wrong. "The board was acting in good faith at the time, and believed that our actions were in accordance with the law. In retrospect, the procedure did not adequately promote the goal of insuring public notice before any action was taken by the board."

The statement echoed sentiments expressed by Oklahoma Governor Mary Fallin when the charges were first announced.

"The governor doesn't think there's any malicious intent in anything the Pardon and Parole Board was doing," said Alex Weintz, Fallin's communications director.

Top aides for Fallin had initially responded to Prater's accusations by saying he was confusing parole hearings with the Board's consideration of commutation requests. The Board didn't list the names of prisoners being considered for commutation but did announce their names during monthly meetings. The Attorney General's office had issued an opinion in October 2012 that said the Board could consider commutation requests submitted by prisoners before they were eligible for parole.

Despite the Board members' written acknowledgement that they had violated state law, no plans to replace any of the members have been announced. Of course, most people who break the law are not allowed to sign a statement admitting their wrongdoing and have the charges against them dropped. Most prosecutors would instead consider any such statement to be a confession, and proceed with the criminal case accordingly. ■

Sources: [www.newsok.com](http://www.newsok.com), [www.okcfox.com](http://www.okcfox.com), [www.tulsaworld.com](http://www.tulsaworld.com), [www.washingtontimes.com](http://www.washingtontimes.com), [www.koco.com](http://www.koco.com)

## Writing to Win

Need to write better? *Writing to Win* will teach you the basics of how to compose clear and convincing written and oral legal arguments! 270 pages packed with solid, practical advice and tips.

\$19.95 from PLN's Book Store!

See page 61 for more information.

## EXECUTIVE CLEMENCY

For Info. On Sentence Reduction through Executive Clemency:

**NATIONAL CLEMENCY PROJECT**  
3907 N. Federal Highway, # 151  
Pompano Beach, FL 33064  
954-271-2304



**(35-Years of Clemency & Parole Assistance)**  
**(Transfers Under The Int'l Prisoner Treaty)**

## Alexander Byrd Optics

### Single Vision Eyeglasses Special

**\$36.99** plus S&H

Upgrade to photochromic/  
Transitions by adding \$69.99

All eyeglasses include free UV and Anti-scratch coatings (a \$29.95 value)

Bi-Focals for \$54.99 plus S&H a pair and new  
Two year anything happens warranty for \$25.00

Alexander Byrd Optics  
Po Box #1063  
Richland, WA 99352

To receive order form and details write:

Contact us on CorrLinks at: [abyrdoptics@gmail.com](mailto:abyrdoptics@gmail.com)  
[www.abyrdoptics.com](http://www.abyrdoptics.com)





# Kansas: Prison Healthcare Officials Engaged in Continued Deliberate Indifference

by Robert Warlick

**T**HE KANSAS COURT OF APPEALS HELD that employees of Correct Care Solutions at the Lansing Correctional Facility (LCF) committed continuing Eighth Amendment violations by withholding a prisoner's medical restrictions.

LCF prisoner Ernest Lee Thomas, Jr., 61, had broken his ankle prior to his incarceration in 1989, resulting in arthritis and a permanent deformity. Consequently, he was granted a number of medical restrictions by prison healthcare staff: He was not to climb stairs, had a lower bunk restriction and was allowed to wear tennis shoes rather than regular prison-issued footwear.

Those restrictions continued until January 27, 2011, when Lamont Lane, an LCF nurse, removed them after Thomas failed to attend a medical appointment. Thomas was subsequently moved to a different housing unit that required him to climb a steep hill to reach his cell.

Thomas filed a petition in Leavenworth

District Court that alleged deliberate indifference to his "chronic and continuing medical conditions." The court held his Eighth Amendment rights had been violated when Nurse Lane removed his restrictions without permission from a physician, and noted the punishment for missing a medical appointment evidenced a "total 'disregard for the excessive risk to inmate health and safety.'"

However, the district court found that such deliberate indifference had been rectified and cured because a subsequent decision not to restore Thomas' medical restrictions was based on evaluations by two doctors and a review by Correct Care Solutions' regional medical director.

On appeal, Thomas argued that the removal of his medical restrictions should not have been upheld because the doctors' evaluations were not based on a change in his medical condition or healthcare procedures. The appellate court agreed, finding

that Thomas' Eighth Amendment rights had continued to be violated when prison healthcare staff decided not to reinstate his longstanding medical restrictions.

"In the final analysis, we hold that because of the district court's initial finding and holding of an Eighth Amendment violation in the removal of all medical restrictions as conditions of Thomas' incarceration, it was legally erroneous to find and hold that the Eighth Amendment violation was rectified and extinguished by testimony that was not based on any objective change in Thomas' condition or some known institutional change in the medical standards of the [Department of Corrections]."

The Court of Appeals directed the district court to order the reinstatement of Thomas' medical restrictions. Thomas had not sought monetary damages, only injunctive relief. See: *Thomas v. McKune*, 298 P.3d 1138 (Kan. Ct. App. 2013). ■

- \* *Post-Conviction Specialists (Habeas Corpus/Coram Nobis/PRP/Certiorari/Sentence Modifications/DNA and more).*
- \* *Covers all 50 States and D.C., Federal District Courts, Federal Courts of Appeal, and Supreme Court.*
- \* *Comprehensive investigative services available.*
- \* *Experts and specialists available.*
- \* *Professional legal staff with extensive post conviction experience.*
- \* *Special programs available for United States Veterans.*
- \* *FREE initial consultation.*

**Legal Insights Inc.**

25602 Alicia Parkway Suite 323

Laguna Hills, CA 92653

775-301-3588

info@legalinsights.org

A California 501(c)(3) Non-Profit Organization

## Help From Outside, For Humanity Inside.

Offering basic services on the outside.

The logo for Help From Outside (HFO) is centered, featuring the letters 'HFO' in a stylized font with 'HELP FROM OUTSIDE' written below it. Surrounding the logo are several circular icons representing different services: Finance & Business (dollar sign and bar chart), Social Networking (network diagram), Paralegal (gavel and document), Administrative (envelope), Information (globe and magnifying glass), Phone (telephone handset), and Creative (open book).

Help From Outside understands what you're going through. We can help you accomplish the things you need to get done but can't.

We offer:

- High standards & ethics
- Timely & professional services
- Personal touch

"HFO has excellent business etiquette and ethics."  
- T. Brown

"I like that you sent a personal letter. HFO is more personable than your competitors."  
- A. Mitchell

**WE'VE MOVED! PLEASE CONTACT US AT OUR NEW ADDRESS:**

For a brochure and application please send a SASE to:  
Help From Outside | 2620 Bellevue Way NE #200 | Bellevue, WA 98004  
206.486.6042 | www.helpfromoutside.com

# Report: Increase in Federal Prison Population, Overcrowding

by Derek Gilna

**A** GOVERNMENT STUDY REVEALED THAT overcrowding in the federal prison system worsened over the five-year period from 2006 through 2011, affecting facilities of all security levels.

The study, conducted by the U.S. Government Accountability Office (GAO), warned that the growing population of the federal Bureau of Prisons (BOP) threatens to result in increasingly negative effects for prisoners, staff and the prison system's infrastructure. The 85-page report further indicated that the increase in the number of federal prisoners coincided with actions by various states to not only reduce their prison populations but also lower their crime rates and cut costly corrections budgets.

The GAO report found the increase in the federal prison population occurred despite the addition of thousands of beds due to the opening of five new federal facilities. At the same time, four federal minimum-security camps closed.

According to the study, federal prisons were 39% over capacity as of September 2011. Further, the report predicted that overcrowding would climb to more than 45% above the BOP's maximum capacity by 2018.

The GAO warned that prisons may experience rising rates of violence among prisoners and growing levels of stress among prison staff because overcrowding contributes "to increased inmate misconduct, which negatively affects the safety and security of inmates and staff."

"If you start cramming more and more people into a confined space, you're going

to create more tensions and problems," noted David Maurer, director of Homeland Security and Justice Issues for the GAO. "It creates the possibility that someone's going to snap and have a violent incident."

The BOP said its "rated capacity" – the term used to describe maximum population levels – requires 25% double bunking and 75% single bunking in high-security cells; 50% double bunking and 50% single bunking in medium-security prisons; and 100% double bunking in low- and minimum-security facilities.

Overcrowding also puts a strain on prison infrastructure such as dining halls, bathrooms, laundry rooms and even television rooms, which become more difficult to access. Some institutions have even had to reduce prisoners' visitation time.

"Some of this sounds small and trivial," Maurer said, "but it adds up."

Additionally, "nearly all BOP facilities had fewer correctional staff on board than needed, with a BOP-wide staffing shortage in excess of 3,200 ... [and] there was also anecdotal evidence that understaffing was stressing the workforce."

The GAO noted that "population pressures on both staffing levels and inmate living space have an upward impact on serious prison violence," although system-wide violence rates had remained stable.

According to statistics compiled by the Council of Prison Locals, the union representing about 32,000 federal prison employees, nearly 60 guards were assaulted by prisoners from January to September 2012, and 14 of those attacks involved weapons.

The GAO also reviewed the BOP's efforts to use its statutory authority to help mitigate the effects of the growing federal prison population, including the Residential Drug Abuse Program (RDAP), utilization of sentence credits for GED participation and increased halfway house placement pursuant to the Second Chance Act. While such efforts were covered more extensively in a separate report, the GAO study focused on the "effects of population growth and prison crowding on BOP operations," including "available bed space, inmate program participation and waiting lists, inmate-to-staff ratios, and available

infrastructure costs."

The reduction in rehabilitative and reentry services is another source of frustration for prisoners. Programs such as RDAP – which in theory can shave up to a year off a prisoner's sentence – and vocational training courses often have lengthy waiting lists.

"People will get out of prison, but they're not being helped to reenter society," stated Inimai Chettiar with the Brennan Center for Justice at the New York University School of Law. "People are going to recidivate more when they get out of horrendous [prison] conditions without job training and development programs to get their lives back together."

The GAO warned that federal prison overcrowding shows no sign of abating. The "BOP's 2010 long-range capacity plan assumes continued growth in the federal prison population from fiscal years 2011 through 2020, with about 15 percent growth in the number of inmates BOP will house," the report stated.

The GAO study did not discount the fact that in the future, "courts might require BOP to address conditions related to crowding, or that the [American Correctional Association] might revoke the accreditation of BOP institutions."

In contrast, the GAO noted that some states had reduced their prison populations to ease overcrowding, stating "the overall growth of the state inmate population began to decline in 2009." Kansas, Mississippi, New York, Ohio and Wisconsin were cited as examples of states making good progress in reducing incarceration levels and overcrowding in their prison systems; as a result of state prison population reductions, there have been a number of prison closures nationwide. [See: *PLN*, June 2013, p.1].

The GAO found that in comparison to the five selected states, federal sentencing laws, mandatory minimums and the absence of parole in the federal prison system have limited the BOP's flexibility to "significantly modify" a prisoner's sentence. In contrast, the selected states have increased sentence reduction credits for positive behavior and completion of faith-based, vocational, drug treatment and "other constructive program[s] with specific

## SMITH'S GUIDE to HABEAS CORPUS RELIEF for State Prisoners under 28 U.S.C. §2254

Example pleadings from the initial habeas corpus petition to the final petition for a writ of certiorari. Let Smith guide you step-by-step through the federal courts with confidence. 380 pages.

\$24.95 + \$6.95 shipping & handling. In CA add \$2.18 sales tax. Sent via USPS media mail. Money orders, personal or institutional checks ONLY. Send \$31.90 (In CA, \$34.08) payable to Roberts Company.

Send name, address, prisoner #, and payment to:  
**Roberts Company, 15412 Electronic Lane #101**  
**Huntington Beach, CA 92649**  
Also available on Amazon.com

performance standards.”

“[The report] pointed out exactly what we assumed,” said U.S. Rep. Bobby Scott, who has been critical of mandatory minimum sentences. “With more inmates, [prison officials] focus more on security and less on the programs that can rehabilitate the prisoners.”

Overall, the GAO report did not so much blame the BOP for an increasing number of prisoners, overcrowding and associated problems as highlight what many corrections experts acknowledge is a continuing and unsustainable trend. It is also an expensive trend.

According to a report released by the Congressional Research Service on March 4, 2014, “The burgeoning federal prison population has led Congress to increase appropriations for the BOP’s operations and infrastructure. In FY1980, Congress appropriated \$330.0 million for the BOP. By FY2014, the total appropriation for the BOP reached \$6.859 billion.”

The Congressional Research Service noted that “Congress could choose to mitigate some of the issues related to federal prison population growth by appropriating more funding so the BOP could expand prison capacity to alleviate overcrowding, but this would only continue the upward climb in the BOP’s appropriations.” Alternatively, “Congress could also consider ways to reduce the number of inmates held in federal prison through methods such as increasing good time credit for inmates who participate in certain rehabilitative programs, placing more low-level offenders on community supervision in lieu of incarceration, or reducing mandatory minimum penalties for some offenses.”

The federal prison population reached

216,265 in mid-April 2014, inclusive of offenders in community-based facilities. ■

Sources: “Bureau of Prisons: Growing Inmate Crowding Negatively Affects Inmates, Staff,

and Infrastructure,” GAO (Sept. 2012); “The Bureau of Prisons (BOP): Operations and Budget,” Congressional Research Service (March 4, 2014); [www.buffingtonpost.com](http://www.buffingtonpost.com); [www.bop.gov](http://www.bop.gov)

## Liberty Interest Necessary to Trigger Arkansas Judicial Review

by Mark Wilson

THE ARKANSAS SUPREME COURT HAS upheld the dismissal of a prisoner’s state judicial review action because he failed to assert a constitutional violation.

Arkansas Department of Corrections (ADC) prisoner James Chadwick Renfro said he had entered into an agreement with prison officials that allowed him to make and send greeting cards as a hobby craft. However, the ADC subsequently implemented an administrative directive that changed the rules governing that privilege. Prison officials then relied on the new directive to impose and uphold a disciplinary action against Renfro for what he claimed would have been allowable conduct under the original agreement. He also argued the disciplinary action violated applicable ADC rules.

Renfro brought a state judicial review and declaratory judgment suit challenging the dismissal of his disciplinary grievance, the application of the new administrative directive and prison policies which allegedly violated ADC officials’ contractual obligations.

The circuit court denied relief, concluding that Renfro’s suit “was barred under the Arkansas Administrative Review Act, codified as Arkansas Code Annotated sections 25-15-201 to -217 ... because the

Act specifically exempts inmate actions and [Renfro] failed to state facts regarding the alleged violation sufficient to create a liberty interest protected by the Due Process Clause.”

Conducting a de novo review, the Arkansas Supreme Court noted that in *Clinton v. Bonds*, 306 Ark. 554, 816 S.W.2d 169 (Ark. 1991), it had held the Act “unconstitutional to the extent that it deprived inmates of review of constitutional questions.” Thus, when a prisoner “challenges a disciplinary proceeding and the ADC officials’ implementation of ADC rules, the petitioner must raise a constitutional question sufficient to raise a liberty interest merely to fall within the classification of claims subject to judicial review.”

Although Renfro argued “that he lost his craft tools and supplies, income, and certain privileges,” the Court held that none of his claims was “sufficient to assert a deprivation of a liberty interest.”

The Supreme Court concluded that Renfro had “failed to sustain a claim under section 25-15-212 to support a judicial review of the ADC’s decision,” and the dismissal of his suit was therefore affirmed. See: *Renfro v. Smith*, 2013 Ark. 40 (Ark. 2013). ■

Introducing **THE BUZZ REPORT!** Subscribe today, and get all of your sports scores and lines delivered conveniently to your email inbox, every day! Add **info@sportzzbuzz.com** to your Corrlinks email subscription list for info. on how to get The Buzz!

# Seventh Circuit: Prisoner with Back Condition Stated Claim for Fall from Upper Bunk

by Michael Brodheim

THE SEVENTH CIRCUIT COURT OF APPEALS held that a prisoner who suffers from scoliosis stated a claim for deliberate indifference when he alleged that he fell and injured himself trying to climb into an upper bunk bed after specifically complaining that, due to back pain, he wasn't able to access the upper bunk.

In January 2009, Illinois state prisoner Dorcus Withers filed suit pursuant to 42 U.S.C. § 1983, alleging that various health-care professionals had been deliberately indifferent to his serious medical needs in violation of the Eighth Amendment's ban on cruel and unusual punishment. The district court granted summary judgment to the defendants.

On appeal, the Seventh Circuit noted that although Withers suffered from scoliosis (i.e., curvature of the spine) and "frequent flare-ups" of back pain, the evidence was "overwhelming" that he was also a malingerer and had no medical need for a back brace, a medical mattress or orthopedic shoes – some of the items he repeatedly requested.

The Court of Appeals was troubled, however, by an encounter between Withers and prison nurse Debra Miller. According to Withers, Miller had denied his request to let him stay overnight in the prison's Health Care Unit despite his report of back pain; she then returned him to his cell in a wheelchair. When he told her that he wouldn't be able to climb into his upper bunk, she replied that he'd "figure it out" and left. Withers claimed he then fell and injured himself trying to climb into

the upper bunk, which was not equipped with a ladder.

The appellate court wrote that "Even if all the plaintiff's allegations are true ... they don't make a conclusive case of deliberate indifference. The nurse may, in light of the plaintiff's record of malingering, have believed that he would have no difficulty climbing to the upper bunk, or at least that he would not fall and hurt himself. She may have believed he was just trying to lie his way into a more comfortable bed in the Health Care Unit."

Regardless, the Seventh Circuit held that Withers' claim related to his fall from the upper bunk may have merit, and there was at least a genuine issue of material fact as to whether Nurse Miller was deliberately indifferent to his medical needs in that re-

gard. All other aspects of the lower court's summary judgment order were affirmed. See: *Withers v. Wexford Health Services, Inc.*, 710 F.3d 688 (7th Cir. 2013).

Following remand, the district court entered summary judgment in favor of the defendants on February 12, 2014, dismissing the case. The court found that Nurse Miller was not deliberately indifferent to Withers' medical condition, noting that he had a mild form of scoliosis, may have exaggerated his condition and did not suffer any significant injuries. Further, the district court held that even if Withers' allegations were true he could at most demonstrate negligence, which does not support an Eighth Amendment claim. See: *Withers v. Wexford Health Services, Inc.*, U.S.D.C. (C.D. Ill.), Case No. 1:09-cv-01035-HAB-JAG. ■

## High-Ranking Illinois Prison Official Fired due to Criminal History

ACCORDING TO COURT RECORDS OBTAINED by the *Chicago Sun Times*, Xadrian R. McCraven, 44, has a lengthy criminal history that includes a 1987 conviction for disorderly conduct, a 1989 conviction for illegal possession of a handgun and a conviction in 1998 for reckless conduct related to a domestic battery case. Plus around two dozen arrests in his youth for offenses that ranged from arson and aggravated assault to attempted robbery and drug possession.

McCraven applied for a job with

the Chicago Police Department, but was rejected due to his criminal history. He unsuccessfully argued in federal court that his record should not have been considered because the arrests had been expunged.

His lawsuit was dismissed, with the court finding there was no proof the police background check was improper or that the department had discriminated against him due to his race. A magistrate wrote in an August 2000 ruling that the police background investigation found McCraven was known "to be a drug dealer, gang member and a supplier of guns to other gangs."

But that didn't stop him from subsequently obtaining jobs with the Chicago Housing Authority Police Department, the Illinois Department of Professional Regulations and the Illinois Department of Children and Family Services (DCFS).

He applied for a position with the Illinois Department of Corrections (IDOC) in 2007, and was rejected. Regardless, in 2011, while employed with the DCFS, he was assigned to work in the prison system's intelligence unit for two months – before the assignment was terminated due to "suitability issues" uncovered in a background



**Channel Guide**  
magazine

**Know What's Good On TV With**  
**Channel Guide**  
magazine

- Daily schedules for **over 120 channels**
- Weekly **TV best bets**
- **Over 3,000 movie** listings
- **TV Crossword, Sudoku, celebrity interviews** and more
- **1 Year** (12 issues) for just **\$30**

**Mail your \$30 check or money order payable to**  
**Channel Guide Magazine to:**  
Channel Guide Magazine AAFPLNB  
PO Box 8501, Big Sandy, TX 75755-8501  
**Include your name, ID number and address.**  
**Or call 866-323-9385**



check. McCraven had admitted in a job application that he was a gang member in the 1980s, reportedly with the Young Latino Organization Disciples.

According to a wrongful termination suit filed by McCraven, he was fired from the DCFS in 2012 after an investigation found he was “writing and responding to hundreds of lewd and inappropriate emails” at work and had falsified information on a job application.

His lawsuit was dismissed, but McCraven settled a union grievance with state officials in June 2013 and received a 10-day suspension. He also received six months back pay and was transferred to the Department of Corrections, where he landed a \$111,432-a-year job as a senior advisor to the IDOC’s chief of parole.

After McCraven’s criminal record was exposed by the *Sun Times*, IDOC spokesman Tom Shaer said McCraven was placed on paid leave in December 2013 and scheduled for a pre-disciplinary hearing.

“In the hearing, the Department of Corrections will provide its reasoning for seeking discipline against the employee, and the employee can provide his rebuttal,” said Shaer. “If termination is pursued, an employee is suspended without pay pending the termination process,” he added.

McCraven was fired from his position with the IDOC on January 6, 2014 due to “inconsistencies in employment applications.”

Several days later, state Senator Kirk Dillard called on Governor Pat Quinn to remove IDOC director Salvador Godinez in connection with the McCraven scandal. Godinez’s chief of staff had signed off on McCraven’s 2013 hiring despite his criminal record, prior gang membership and a finding that he was not eligible for a position in the IDOC because his nephew was on parole at the time.

“It’s outrageous that former gang members are now running the prisons,” said Dillard. “No matter if you’re a Democrat or Republican, from Chicago or Cairo, this is just plain wrong and dangerous.”

Senator Dillard and other lawmakers have questioned whether McCraven obtained his state job positions through political influence. McCraven was hired under former Governor Rod Blagojevich’s administration; Blagojevich was impeached, removed from office and prosecuted on corruption charges, including soliciting bribes for political appointments. He was sentenced in December

2011 to 14 years in federal prison.

Governor Quinn has expressed his support for Godinez. Meanwhile, two Illinois state legislators – one a former prosecutor and the other a former police officer – have proposed a bill that would prohibit anyone

who is “documented to have been a member of a criminal gang” from being hired by the IDOC, State Police, DCFS and Department of Juvenile Justice. ■

Source: [www.suntimes.com](http://www.suntimes.com)

## California: Surety Entitled to Exoneration of Bail Bond Forfeited as a Result of Defendant’s Deportation

by Michael Brodheim

THE CALIFORNIA COURT OF APPEAL HAS held that a bail surety did not forfeit the bond it posted for a defendant who was deported before he could appear in court to answer the underlying criminal charge against him.

In June 2011, Financial Casualty & Surety, Inc. (Financial) posted a \$100,000 bond for the release of Luciano Villa, who had been charged with driving under the influence. Villa was deported two days after the bond was posted, which made it impossible for him to appear in court. As a result, his bail was forfeited.

Financial sought to have the forfeiture vacated and its bond exonerated. The trial court found the company did not meet the statutory requirements set forth in Penal Code Section 1305(d) for exoneration of a forfeited bail bond, even when the defendant had been deported.

Specifically, the court held that because Financial “had full knowledge” of Villa’s immigration status when it posted a bond on his behalf, it had “unclean hands” and “should [therefore] be held responsible” for the bond forfeiture.

The Court of Appeal reversed, finding the trial court had “applied the wrong legal standard when it used the clean hands doctrine to deny Financial’s motion to vacate the order of forfeiture.” Even assuming Financial “should have known” that Villa would likely be deported after he was released on bond, that did not mean the company “connived” in his deportation.

Under the plain meaning of the statute, exoneration is mandatory absent “connivance of the bail” and the doctrine of clean hands had no relevance in this context, the appellate court wrote. See: *County of Los Angeles v. Financial Casualty & Surety, Inc.*, 216 Cal. App. 4th 1192 (Cal. App. 2d Dist. 2013). ■



**TIMEZONE GIFTS**

**America's  
#1  
Prisoner  
Gift Shop**

**Prisoner Gift Connection  
to Family and Friends**

For a free catalog  
with over 150 Gifts  
Ranging \$2.00-\$12.95  
(Greeting Cards, Toys,  
T-Shirts, Stuffed Animals,  
Jewelry, and more),  
Write to:  
**TimeZone Gifts, L.L.C.  
P.O. Box 41093  
Houston, TX 77241**

# Philadelphia Sued Over Rejection of Ad Criticizing U.S. Incarceration Policies

by Michael Brodheim

ON MAY 20, 2013, A FEDERAL DISTRICT court in Pennsylvania denied the City of Philadelphia's motion to dismiss in a case brought by the National Association for the Advancement of Colored People (NAACP) and ACLU, challenging the city's policy related to advertising at the Philadelphia International Airport.

In April 2011, the NAACP had released a report titled "Misplaced Priorities," which espoused the view that the United States overspends on incarceration at the expense of education and proposed specific reforms to reverse that trend. Seeking to increase public awareness, the NAACP prepared ads to display at airports around the country. The ad that the organization proposed to post at the Philadelphia International Airport read, in relevant part, "Welcome to America, home to 5% of the world's people & 25% of the world's prisoners. Let's build a better America together."

City officials rejected the ad, claiming that they did not accept "issue" or "advocacy" advertisements, which prompted the NAACP and ACLU of Pennsylvania to file suit on First Amendment and state constitutional grounds. [See: *PLN*, April 2012, p.50].

The NAACP noted that "other issue-oriented, educational, and advocacy advertisements" had been displayed at Philadelphia's airport, including ads related to wildlife preservation, global warming, racial equality and supporting U.S. military troops.

"The government cannot pick and choose which speech it deems acceptable and which it does not," stated Chris Hansen, senior staff attorney for the ACLU's Speech, Privacy and Technology Project. "The fact that the airport accepted some political issue ads but not the NAACP's shows the arbitrary nature of the city's unwritten and undefined policy. It is a clear violation of the First Amendment's prohibition against the government favoring some speakers over others."

The city subsequently agreed to post the NAACP's ad at the airport, but only for three months. In March 2012, Philadelphia officials adopted a written policy prohibiting political and noncommercial advertising at the airport. In response the NAACP filed

an amended complaint challenging the new policy. The city then filed a motion to dismiss, arguing that its airport ad policy was viewpoint-neutral and a reasonable regulation, and thus not unconstitutional.

The district court rejected the city's argument as premature. In order to determine whether the city's restriction on speech in airport advertisements is constitutional, the court stated it must first determine whether the airport is a private forum or designated public forum, as different standards of judicial scrutiny apply. The city argued for the former classification while the NAACP argued for the latter.

"The walls of Philadelphia International Airport are public space, and the city

officials do not have the right to suppress any group's viewpoint based on their own beliefs or political considerations," said NAACP general counsel Kim Keenan.

In the absence of a developed factual record from which it could determine the appropriate forum classification, the district court denied the city's motion to dismiss.

This case remains pending, with the parties filing cross-motions for summary judgment in early November 2013. See: *NAACP v. City of Philadelphia*, U.S.D.C. (E.D. Penn.), Case No. 2:11-cv-06533-CMR; 2013 U.S. Dist. LEXIS 71332. ■

Additional sources: *Courthouse News Service*, [www.naacp.org](http://www.naacp.org)

## DC Circuit: Federal Prisoner not Limited to Seeking Relief via Habeas Corpus

by Michael Brodheim

THE DISTRICT OF COLUMBIA CIRCUIT Court of Appeals has held that a federal prisoner may seek relief via means other than habeas corpus, so long as success on the merits of the claim does not "necessarily imply the invalidity of confinement or shorten its duration."

In 1993, Brian A. Davis was convicted of drug-related offenses involving both powder and crack cocaine. At that time the federal sentencing guidelines treated 1 gram of crack cocaine the same, for sentencing purposes, as 100 grams of powder cocaine, resulting in a 100:1 sentencing disparity. Davis received a life sentence, later reduced to 30 years in federal prison.

In 2007 and again in 2010, both Congress and the U.S. Sentencing Commission took steps to reduce the sentencing disparity related to crack and powder cocaine (the current ratio is 18:1 under the Fair Sentencing Act). Unfortunately for Davis, those efforts only included crimes involving amounts of cocaine less than the amounts involved in his offenses.

In 2011, Davis filed suit under *Bivens* and the Declaratory Judgment Act, 28 U.S.C. § 2201(a), seeking a declaration

that he was denied equal protection under the law because Congress and the Sentencing Commission had failed to reduce the sentencing disparity for defendants – like himself – who were convicted of crimes involving larger amounts of crack cocaine.

Davis sought to "compel the Commission to reinstate its proposed 1995 amendments" to the federal sentencing guidelines, which would have created a 1:1 sentencing ratio for crack and powder cocaine offenses. Congress had expressly rejected the proposed amendments when it passed Public Law 104-38.

The district court dismissed Davis' lawsuit on the grounds that the relief he requested was only available, if at all, via a petition for habeas corpus.

The D.C. Circuit reversed, holding that Supreme Court precedent "channeled" prisoners' claims for relief into habeas petitions only if the remedy sought was within "the 'core of habeas.'" Citing *Wilkinson v. Austin*, 544 U.S. 74 (2005) [*PLN*, Aug. 2005, p.24], the appellate court concluded that a habeas petition was required only if success on the merits of the claim would "necessarily imply the invalidity of confinement or shorten its

duration.”

The Court of Appeals reasoned that success for Davis would not “necessarily” lead to a decrease in his prison term, because even if he prevailed on his equal protection challenge the district court would still retain the discretion to deny him a sentence reduction. The Court also found that Davis could proceed on his *Bivens* action, while remark-

ing that his *Bivens* claim was “admittedly flawed ... and possibly fatally so.” See: *Davis v. United States Sentencing Commission*, 716 F.3d 660 (D.C. Cir. 2013).

Following remand, the district court granted the Sentencing Commission’s motion to dismiss on April 11, 2014, noting that federal circuit courts had found no constitutional equal protection violation in

Congress’ refusal to enact the Commission’s 1995 proposed amendments, and that Davis had failed to cite authority to support his argument other than a concurring opinion in a Second Circuit case. See: *Davis v. United States Sentencing Commission*, U.S.D.C. (D. D.C.), Case No. 1:11-cv-01433-JEB. ■

Additional source: [www.famm.org](http://www.famm.org)

## Massachusetts DOC, Hospital Officials Disciplined in Prisoner’s Death

by Derek Gilna

**A**N INVESTIGATIVE REPORT ORDERED BY Massachusetts Governor Deval Patrick into what he termed the “disgusting” death of a mentally-ill prisoner at Bridgewater State Hospital found not only numerous policy violations, but also evidence of a cover-up of the facts surrounding the death. As a result, three guards and three high-ranking Department of Correction (DOC) officials were disciplined.

Patrick was prompted to investigate the 2009 death of state prisoner Joshua K. Messier following a *Boston Globe* article that described delays and misleading information provided by DOC officials in response to media inquiries. The investigation was conducted by Public Safety Secretary Andrea Cabral.

Messier, who was reportedly disruptive, had been placed on his bed in four-point restraints. Two guards then pushed his chest almost to his knees in a move called “suitcasing,” and he died of a heart attack shortly thereafter.

Bridgewater superintendent Karin Bergeron, who was required to investigate and report on prisoners’ deaths, tried to avoid issuing written findings that might embarrass the DOC and Bridgewater. She attempted to arrange a phone conference regarding Messier’s death to avoid filing a written report. She also requested repeated extensions of time to file her report, even though an autopsy determined the death was a homicide and other reports found Messier had suffered blunt force trauma.

Bergeron is no longer employed with the state.

Secretary Cabral’s investigation determined that Bridgewater officials misled a watchdog agency, the Disability Law Center, by saying the guards involved in Messier’s death had been cleared by a Plymouth County grand jury, when in fact the case was never submitted to the grand jury. Cabral said former DOC Commissioner Harold W. Clarke, who now heads Virginia’s prison system, was unhelpful

during the investigation.

Current Bridgewater superintendent Robert F. Murphy was reprimanded for delaying completion of a required report on the guards’ use of force until several years after Messier’s death. Correction Commissioner Luis S. Spencer also was reprimanded, and Assistant Deputy Commissioner Karen Hetherson was asked to resign. She had overruled an internal affairs report that cited two DOC guards for misconduct.

Further, three guards were placed on paid administrative leave as a result of Secretary Cabral’s investigation – Derek Howard and John C. Raposo for improper use of force when restraining Messier, and a third guard for failing to properly supervise them. ■

Sources: *Boston Globe*, *Associated Press*

**HOT DREAMS**  
GET YOUR NEW NON NUDE CAT #31 AND FREE PHOTO U MUST SEND A S.A.S.E ALONG WITH 5 STAMPS OR \$2.00 HUNDREDS TO CHOOSE IN BIKINI AND PANTIES  
GET THE NON-NUDE SUPER CATALOG PACKAGE#1 THAT HAS OVER 2000 HOT BABES IN PANTIES, LINGERIE, THONGS, YOU FAVORITE TYPES OF SHOTS ONLY \$15.00 FREE S/H  
TO RECEIVE A 30 PIC SET OF CAMELTOE SHOTS AND COEDS OF ALL SEXY HOT WHITE BABES SEND ONLY \$20.00 ALONG WITH 4 STAMPS! THEY ARE HOT! IN PANTIES BRA AN THONGS AN GSTRINGS  
GOT STAMPS? SEND 50 STAMPS TO GET 10 NON NUDE HOT PICS. SEND \$27.00 TO GET NON NUDE CATALOGS 2-11 SEND \$15.00 TO GET CATALOGS 2-7 AND SAME PRICE IF U ONLY CATALOGS 7-11 COMES WITH THE SET CATALOG. SEND 5 STAMPS OR \$2.00 TO GET NON NUDECAT#30. SEND ONLY\$15 TO GET THE ALL NUDE BIG PACK CATALOG#1  
PLEASE MAKE ALL PAYMENTS TO : **HOT DREAMS**  
P.OBOX 652 DEPT PN/ RACELAND,LA 70394  
DON'T REMOVE THIS AD!!

**PASS**  
Prisoner Assistance Scholastic Service provides educational materials nationally to prisoners in state and federal prisons and jails.

Prisoners who successfully complete the PASS program earn a degree in Personal Psychological Development which can be used as evidence of rehabilitation before parole boards and with prison officials.

\$500 for the entire course of study and degree.

**10 COURSES  
2 SEMESTERS**  
Graded study - completed through the mail.

**FOR MORE INFO**  
**1-888-670-7277**  
[www.passprogram.org](http://www.passprogram.org)  
[pass@passprogram.org](mailto:pass@passprogram.org)  
PASS Program, PO BOX 2009, San Francisco, CA, 94126

# LEARN TO PROTECT YOUR RIGHTS

## YOU HAVE A RIGHT TO

- Adequate medical care
- Protection from assault
- Humane living conditions
- Safety from officer abuse

Learn how to defend your basic human rights with the comprehensive litigation guide, **Protecting Your Health and Safety**, 2nd edition, written specifically for prisoners who are unable to receive help from a lawyer.

Written by Robert E. Toone  
Edited by Dan Manville  
*A Project of the Southern Poverty Law Center\**

**COST** \$16 total  
(\$10 + \$6 shipping/handling)  
FREE shipping/handling for orders from Prison Legal News over \$50

## ORDER A COPY

Send a check  
or money order to:  
**Prison Legal News**  
**PO Box 1151**  
**Lake Worth, FL 33460**  
**561-360-2523**

*Be sure to include your name, identification number (if any), and mailing address. We also accept VISA and Mastercard. If using a credit card, please include the type of card (VISA or Mastercard), card number, and expiration date.*

This book does not deal with legal defense against criminal charges or challenges to convictions that are on appeal. Edition last revised in 2009.

\*Please do not send orders to the Southern Poverty Law Center.

## Washington County Jail Remains Closed after Voters Reject Tax Hike

OFFICIALS IN YAKIMA COUNTY, Washington say a deal struck with the city of Fife, near Tacoma, to house the city's prisoners will help make up for lost income from an empty county jail that failed to win the support of voters in a 2012 tax referendum.

Yakima County Department of Corrections director Ed Campbell said he hopes the contract to house prisoners from Fife will be the first of many. He noted the contract, announced in April 2013, should generate \$700,000 in annual revenue.

"The market is certainly different," he said. "It's very competitive, very tough, and there's very little need for beds compared to what it used to be so we continue to try to work towards getting contracts."

The city of Fife will send low-risk prisoners to Yakima County's main jail, according to County Commissioner Mike Leita. "We have certainty from them that these will be the lowest level of, best type of inmates if you will, therefore they afforded a very good rate."

The scramble for contracts for prisoners from other jurisdictions followed the August 2012 rejection by Yakima County residents of a proposed one-tenth-of-a-cent sales tax hike. The measure was rejected by more than 53% of voters.

County commissioners had requested the tax increase to cover \$3 million in annual debt payments on three bond issues, including one from 2002 to build Yakima's newest jail on Pacific Avenue. The 288-bed jail was built specifically to generate revenue, with local officials counting on other cities and counties to house their prisoners at the facility. But those other jurisdictions withdrew their prisoners in 2010, having found alternatives to incarceration to cut costs.

As a result, Campbell closed the Pacific Avenue jail, laid off employees and reduced expenses for prisoner healthcare and food at the main jail, slashing his budget by more than \$12 million. The Pacific Avenue jail has remained closed since 2011; around \$17 million is still owed on its construction costs.

The other two outstanding jail bonds

were for security upgrades at Yakima's main 950-bed downtown jail and the remodeling more than a decade ago of a former bowling alley to be used as a minimum-security facility.

One Yakima County official blamed the economy for the rejection of the sales tax increase.

"In these difficult times, it is asking a lot of the taxpayers to willingly increase their taxes," said County Commissioner Rand Elliott. "They have expressed themselves and we will move on to our next option."

The contract with Fife means about three dozen beds at Yakima County's main jail should be filled, which will make up a small amount of the revenue lost when the Pacific Avenue jail closed. County officials said they also planned to transfer \$2.8 million from the county's road fund to the general fund to cover the budget shortfall.

In the meantime, talks began in early 2014 between Yakima County and the State of Washington, which needs to find beds for around 300 minimum- and medium-security prisoners. Housing those prisoners will cost about \$7 million per year, and the legislature passed a bill in 2013 that allows state prisoners to be held in county jails in the wake of budget cuts that led to the closure of three prisons.

In April 2014, the *Yakima Herald-Republic* reported that the legislature had approved a one year, \$1.5 million contract to house 75 female state prisoners in Yakima County, which may lead to the reopening of the Pacific Avenue jail.

"We're looking at investigating every opportunity to house inmates at the lowest possible rate," said state Rep. Charles Ross. "With Yakima sitting there with an empty facility, [it is] an attractive place for the state."

Due to the state contract and renewed interest by other cities and counties to house their prisoners in Yakima County, Campbell said he was "cautiously optimistic" the Pacific Avenue jail would reopen by the end of 2014. ■

Sources: *Yakima Herald-Republic*, [www.kimatv.com](http://www.kimatv.com), *Seattle Times*



# State of Washington Prison Phone Justice Campaign!

*Prison Phone Justice Project needs your help for statewide campaign!*

**W**hile much progress has been made in reducing the costs of long distance prison calls, we are still fighting to reduce the high costs of in-state prison and jail calls at the local level. In January 2014, the Human Rights Defense Center (HRDC), the parent organization of Prison Legal News, reopened its Seattle office to launch the Washington Prison Phone Justice Campaign.

This is our first statewide phone justice campaign, and we're excited to have people involved on both the local and national levels who are dedicated to ending the exorbitant phone rates and kickbacks associated with the prison phone industry. David Ganim, HRDC's national Prison Phone Justice Director, has already been obtaining the phone contracts and rates for all 39 county jails in Washington, as well as data from the Washington Department of Corrections.

We recently hired a local campaign director, Carrie Wilkinson, who will manage our office in Seattle and coordinate the statewide campaign. Washington prisoners and their families pay some of the highest phone rates in the nation, and we need your help to win this battle!

Here's how you can help – first, please visit the Washington campaign website:

**[www.wappj.org](http://www.wappj.org)**

There you can see all the ways you can make a difference. The site allows you to sign up for the campaign and upload videos and share blog entries about how high prison phone rates make it difficult for you to stay in touch with your incarcerated loved ones. You can also upload an audio message, and even call in your story to **1-877-410-4863**, toll-free 24 hours a day, seven days a week! We need to hear how you and your family have been affected by high prison phone rates. If you don't have Internet access, you can mail us a letter describing your experiences and we'll post it. Send letters to HRDC's main office at: **HRDC, Attn: WA Phone Justice Campaign, P.O. Box 1151, Lake Worth, FL 33460**. Washington state prisoners can mail us letters and send a copy of this notice to their family members so they can get involved.

By choosing to participate in the Washington Prison Phone Justice Campaign, you will be playing a key role in ending the unfair phone rates that prisoners' families have to pay. We cannot win this battle without your help, so please visit the campaign website and share your experiences! Donations are also welcome and greatly appreciated, and can be mailed to the above address or made online via the campaign site. Thank you for your support!

## News in Brief

**District of Columbia:** Before sending former jail guard Jonathan Womble to prison for just over three years on October 9, 2013, U.S. District Court Judge Reggie Walton called Womble's crime "reprehensible and one of the most serious anyone could commit." Heroin, marijuana, and a cell phone and charger were some of the contraband that Womble had smuggled into the D.C. jail in exchange for cash bribes. [See: *PLN*, Sept. 2013, p.56]. Since 2010, 138 cell phones have been found in the D.C. jail – and staff corruption is apparently one way they are getting into the facility.

**Dubai:** According to a September 30, 2013 news report, prisoner Ayoub A.Y. was stabbed and beaten to death by a gang of multi-national prisoners who cut off his ear and his finger before killing him. On April 24, 2014 a special tribunal acquitted 18 of the prisoners accused of Ayoub's murder. An unnamed 21-year-old police officer was fired in connection with the incident; he left a gate open as he ran toward the disturbance that allowed other prisoners to rush into the unit.

**Florida:** Guard Vincent Taylor resigned from his position at the West Tampa Detention Center on September 17, 2013 after he violated Department of Juvenile Justice policy when he brought his cell phone into the facility. Taylor allegedly allowed three juvenile offenders to use his phone to post pictures of themselves on Facebook. Another employee at the state-operated detention center, supervisor Charlie Whitehead, resigned in May 2013 for policy violations that included use of excessive force.

**Florida:** Two former state prison guards were arrested on September 25 and 26, 2013, and face charges of official misconduct. Erik Boe and Leon Brown were investigated after Ryan Anderson, a prisoner at a work release center in West Palm Beach, called 911 to file a complaint against them. They allegedly demanded that Anderson pay them to avoid being accused of selling drugs; he initially paid \$370, but Boe and Brown told him they wanted more money.

**Georgia:** Channel 2 Action News confirmed on September 9, 2013 that an unnamed Fulton County Sheriff's Office employee was disciplined following a prisoner's escape from the North County Jail Annex in Alpharetta. A deputy was seen

on surveillance video as the last person to handle an exterior door through which Michael Shawn Wilson escaped, and an investigation determined that deputies had put tape over the latches of certain locks, rendering them inoperable. Assistant City Administrator James Drinkard noted that concerns had been raised about door locks that could not be controlled remotely; he said he believed the problem had since been resolved.

**Georgia:** Dustin Blake Otwell, 31, a former jailer for the city of Smyrna, was sentenced to 10 years in prison after he altered the personal property documents of an arrestee and stole the man's money. Otwell was unaware that the arresting police officer had counted the \$600 in cash while his patrol car's video camera recorded. The former jail guard tried to blame the officer for the theft. The Associated Press reported on September 11, 2013 that a Cobb County judge had ordered Otwell to serve at least two years of his sentence.

**Hawaii:** According to an October 1, 2013 news report, 17 Hawaii prisoners were removed from the Halawa Correctional Facility and mainland prisons and transferred to federal custody after an investigation into bribery and corruption among prison guards and members of the USO Family gang resulted in federal indictments. Guards John Joseph Kalei Hall and Feso Malufau are accused of receiving thousands of dollars in bribes to smuggle cigarettes and drugs into the Halawa prison for distribution by gang members. The guards, who face multiple charges, both lost their jobs; Hall had already been sentenced to 13 months in federal prison. [See: *PLN*, Jan. 2014, p.56]. Around eight of the prisoners sent to the Honolulu Federal Detention Center to await trial later went on a hunger strike to protest poor conditions at the facility.

**Illinois:** Cook County Jail prisoner Roosevelt Gray, 26, collapsed on September 26, 2013 as he was being released after serving a two-day sentence for driving on a suspended license. Gray was alert when transported to a nearby hospital but died later that morning. The medical examiner's office ruled his death was natural, resulting from pulmonary thromboembolism, deep vein thrombosis and obesity.

**Kansas:** On September 5, 2013, Sedgwick County Sheriff Jeff Easter announced

that an unnamed detention deputy had been arrested in connection with the theft and unauthorized use of a \$50 debit card belonging to a prisoner who was transferred to a work release facility. The prisoner complained about the missing card and the ensuing investigation revealed surveillance video that showed a uniformed deputy using the card to purchase \$50 worth of items at a store about eight hours after the prisoner had been moved. The deputy bonded out of jail and was placed on administrative leave.

**Kentucky:** Narcotics detectives from the Kentucky State Police arrested Donna S. Hunter, 60, on September 20, 2013. She was charged in connection with smuggling cigarettes and drugs into the Madison County Detention Center, where she worked in the facility's kitchen. The investigation resulted in charges of promoting contraband, prescription substance not in proper container and trafficking in a controlled substance. Hunter pleaded guilty and was sentenced on April 3, 2014 to a year in prison.

**Louisiana:** As Tropical Storm Karen approached on October 4, 2013, Orleans Parish Sheriff Marlin N. Gusman transferred 432 prisoners from temporary tent housing to State Department of Public Safety and Corrections facilities. In a prepared statement, the sheriff said his office had also released 70 prisoners who were being held on minor charges in advance of the storm, and that the jail would stop accepting new prisoners for municipal or traffic violations. The Orleans Parish Prison had been severely damaged by Hurricane Katrina in 2005. [See: *PLN*, April 2007, p.1].

**Maryland:** On September 9, 2013, Judge Jerome R. Spencer sentenced former Charles County jail guard Michael Anderson Hurd to a 25-year prison term, then suspended all but seven years of the sentence. Hurd had entered an Alford plea to one of six counts of child sex abuse and prosecutors dropped the remaining charges as part of the plea agreement. Following the sentencing, several people who identified themselves as fellow jail guards called the *Maryland Independent* claiming that Hurd was given preferential treatment. The anonymous callers alleged that Hurd's family had close ties with Charles County Sheriff Rex Coffey and expressed outrage that, as a result of that relationship, Hurd

had been allowed to draw a paycheck while being held without bond and was allowed to resign instead of being fired.

**Michigan:** Kent County jail guard Jaclynn Rodriguez was fired on September 23, 2013 for "failure to pass probation" following an internal investigation into a September 2012 incident in which she was attacked by prisoner Willie Lee Wilson. Jail surveillance video showed Rodriguez being knocked to the ground and strangled. Several prisoners came to her aid, and Kent County Prosecutor Robin Eslinger said their actions had kept Wilson from killing Rodriguez. Wilson was found guilty of attempted murder as a result of the assault and sentenced to 80 to 160 years.

**Mississippi:** Two men have been sentenced for building a pipe bomb discovered in a car at the South Mississippi Correctional Institution. Scott Jenkins Waits and John Eric Harberson were indicted on June 25, 2013 for making and possessing a destructive device; they pleaded guilty the following month. Officials said the bomb was not intended for use at the prison. Harberson reportedly drove a woman to the facility to visit a prisoner, and forgot the pipe bomb was in the car. Jenkins and Harberson were each sentenced on December 18, 2013 to around 2½ years in prison.

**Nebraska:** Douglas County law enforcement officers opened an investigation in early October 2013 into allegations that two unnamed former guards, one male and one female, sexually assaulted prisoners at the county jail. Both guards resigned, as did a third who had been accused earlier

in 2013. Female prisoners reported that the guards would act as lookouts for one another while they sexually abused them. Douglas County Corrections Director Mark Foxall called the allegations a "personnel matter," but on October 25, 2013 the case was turned over to federal prosecutors.

**New Jersey:** Robert Pyott, 48, a guard employed at the Federal Correctional Institution at Fairton since 1995, was found dead of an apparent self-inflicted gunshot wound outside the perimeter fence of the facility on September 21, 2013. Bureau of Prisons spokesman Eric Williams said Pyott's body was discovered beside a vehicle shortly after 7 pm. The FBI and New Jersey State Police are investigating the incident, but no foul play is suspected.

**New York:** On October 6, 2013, Suffolk County District Attorney Thomas Spota announced new charges against Patrick O'Sullivan, 21, an accused rapist being held at the Riverhead Correctional Facility. While awaiting trial, O'Sullivan was accused of plotting the death of his victim by passing paper airplanes to a fellow prisoner that contained the victim's name, address, a map to her home and instructions on how to dispose of her body. The prisoner who received the notes contacted authorities and was granted an early release in exchange for helping build a case against O'Sullivan.

**North Carolina:** Three former guards and two former prisoners at the GEO Group-operated Rivers Correctional Institution have been sentenced for their roles in a contraband smuggling scheme. [See: *PLN*, Jan. 2013, p.24]. Two of the guards, Raye

Lynn Holley and Rhonda Boyd, were each sentenced to 20 months in federal prison on October 3, 2013, while a third guard, Rashonda Cross, received 45 days of intermittent confinement and 3 years' probation on December 20, 2013. The two former prisoners, Roland Bazemore and Kenneth Dodd, received harsher sentences of 30 months and 37 months, respectively, for participating in the scheme, which involved smuggling cell phones and cigarettes into the facility.

**Oklahoma:** On September 24, 2013, eight prisoners escaped in a transport van when guards left the keys in the vehicle while they took a sick prisoner to a hospital. Six of the prisoners remained with the van when they stopped after driving about a mile, and one called 911 to report the escape. The other two, Lester Burns and Michael Coleman, ran but were quickly recaptured. The van was operated by Prisoner Transportation Services, a private firm based in Nashville, Tennessee. The company declined to comment on the incident.

**Pennsylvania:** Anthony Todora, a former guard at the Northampton County Prison, was one of six guards who filed suit in 2005 raising claims of toxic mold exposure at the facility. Todora and another guard filed a second lawsuit three years later, alleging they had suffered on-the-job retaliation for their initial suit, including "ridiculous nitpicking disciplinary actions." On September 20, 2013, Judge F.P. Kimberly McFadden granted summary judgment to the county in the second lawsuit. McFadden noted that Todora had a history of disciplinary problems prior to



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription!

Quarterly drawing WINS \$100! (Void in New York)

(Last Quarter's winner from Airway Heights, WA.)

TELL YOUR FRIENDS! ACT NOW!!



PO Box 2063 • Fort Walton Beach FL. 32549

[www.InmateMagazineService.com](http://www.InmateMagazineService.com)

## Inmate Magazine Service

## News In Brief (cont.)

filing the original suit, and that he had shown no "matter of public concern" that would entitle him to First Amendment protections from retaliation.

**Pennsylvania:** Two maintenance workers at SCI-Laurel Highlands, Harold Maust and Stephen Toth, were charged with using prisoner labor to perform personal repairs and spending state funds to buy personal equipment and supplies. However, on September 23, 2013, Somerset County District Attorney Lisa Lazzari-Strasler dropped all charges against both men. Maust's attorney said he was happy the charges were dropped, while Toth's lawyer plans to file

suit against state prison officials for the "totally unwarranted" charges. A prison spokesperson said an internal investigation would continue into the allegations.

**Pennsylvania:** Kevin William Small was incarcerated at SCI-Huntingdon when he perpetrated a tax fraud scheme that netted him an additional 135-month federal prison term to be served after completing his state sentence. In January 2012, once his state sentence had expired, Small forged a document that vacated his federal sentence. He was released and remained free for two months before being arrested. U.S. District Court Judge Gene E. K. Pratter was not amused, and on September 30, 2013, Small received a five-year prison sentence for charges related to his escape.

**Rhode Island:** Adult Correctional Institution guard James Petrella was arraigned on October 2, 2013 following his arrest on three counts of delivering a controlled substance. Petrella allegedly sold Oxycodone and Clonazepam to an undercover detective on three occasions in September 2013. A search of his home by Rhode Island State Police revealed four firearms and an assortment of prescription medications. Petrella's bail was set at \$20,000 with surety; he failed to post bond and remained in custody.

**Texas:** In September 2013, McLennan County sheriff's deputies arrested Regina Antoinette Edwards and Dorothy Pennington, both guards at the privately-operated Jack Harwell Detention Center, for engaging in sexual misconduct with prisoners.

## PLN Classifieds

### Want Quality Pictures of

Quality Babes? 4x6 High Res pics  
Send self addressed stamped  
envelope for free catalog!  
PHOTO TRYST  
PO Box 103  
Chapmansboro TN 37035

### PUZZLE BOOKS & EYE GLASSES

Brochure & Free Gifts  
Send 2 Forever Stamps or \$1.00  
Mara Worldwide  
115 W. California Blvd Ste 424-R  
Pasadena, CA 91105

### FREE & LOW COST SERVICES!

Pen Pal listing, photo copies,  
pen pal list, freak pics & more.  
We accept stamps as payment!  
No SASE needed. Mention "PLN"  
V.I.Prisoners, P.O. Box 1052,  
Allen Park, MI 48101  
Email: viprisoners@gmail.com

NUBIAN PRINCESS ENT Est 1998 18+  
Facebook.com/chanail.paree  
\$25 Erotic letters 4 Inmates  
from Chanail! \$27 ur pic&contact  
gets u on F/B \$5 or 20 stamps 4  
photo catalog Cks/MO's Full Book  
FCFS or SASE to Nubian Princess  
Ent. POB 37, Timmonsville, SC 29161

### Best 2014 Cite Book Available

Barkanresearch.com has "Colossal  
Book of Criminal Citations" just  
\$19.95 2500+ cites & more. View  
sample content and order today!

### INMATESERVICES.NET – Affordable

Gifts. Mail first-class stamp to  
Archipelago 13017 Wisteria Dr.  
#310, Germantown, MD 20874 for  
catalog. Show them you care.

### AMBLER DOCUMENT PROCESSING

Type, Design and Prepare  
Manuscripts for Self-Publishing  
Reasonable Rates! Accept all Genres!  
P.O. Box 938, Norwalk, CT 06852

### Free facebook & instagram setup

People searches, release shopping  
Amazon books, book editing, photo  
Duplications, flower & gift, drivers  
license & state case legal research  
Viprisonersservices@gmail.com  
P.O. Box 584609, Kissimmee, FL 34749  
(863) 496-1862 for info or email

### CONNECT TO OUTSIDE WORLD!

PP provides services via internet  
Your information - social networks  
Up to 20 sites - free brochure

PRISONER PROMOTIONS  
2355 Fairview Ave #214  
Roseville, MN 55113

### ASMILE CONNECTION GIVE AWAY!!!

Receive your horoscope daily  
starting today! Add our e-mail  
address to your contact list!  
horoscope@asmileconnection.com

### The VOICES.CON Newsletter – Free

Written by lifers for lifers. For info on how  
to receive Voices.Con monthly, send  
SASE to: PO Box 361, King City, CA 93930.  
On the web at: VoicesDotCon.org;  
Email: Publisher@VoicesDotCon.org

### Inmate Services! E-mail, Legal

ads/Walmart Release  
Clothing? Send SASE to:  
Morris Inmate Serv. PO Box  
6184, Martinsburg, WV 25402

### BB 5 Huge Booty DripNwet \$5.00

Buy Bad Broads 1,2,3,4 & 5 \$25  
Full Color Cats, 1000s of options  
Non-nude – Huge variety  
Send 11 stmps per cat or \$5 MO  
To: On Demand Inmate Services  
PO BOX 81 - PLN, Chelt, PA 19012  
US Female Pen pal list \$22 M/O

### IF YOU WANT THE BEST TRY EPS!

Legal Research & Forms, Internet  
& People Searches, Amazon Books,  
Erotic Photos & Stories, PenPals,  
Special Requests and Much More.  
Send SASE to: Elite Paralegal &  
Prisoner Services, PO Box 1717,  
Appleton, WI 54912



The incidents, which were discovered on recorded cell phone calls, allegedly occurred between 2011 and 2013. Pennington pleaded guilty to a charge of improper sexual activity and was sentenced to five years' probation in January 2014. A third guard, Sherry Lynn Haynes, has been charged with smuggling cigarettes into the facility, while a fourth, John Timothy Spears, was arrested in February 2014 for having a sexual relationship with a prisoner. The facility is operated by LaSalle Corrections.

**Texas:** Jose Rodriguez, 37, ran from the Nueces County Courthouse while being moved to the jail on September 27, 2013. He first tried to carjack a utility truck but the driver fought back. Next, while TV news crews videotaped, Rodriguez jumped behind the wheel of a police cruiser, found the keys were not in the ignition, then jumped out and headed for another police

car. He locked the doors, but officers broke the windows. Rodriguez now faces a long list of charges.

**Turkey:** Security forces searched for eighteen members of the Kurdistan Workers' Party (PKK) who escaped from a Turkish prison on September 25, 2013. The prisoners had been convicted or charged with belonging to the PKK or helping militants; they escaped by digging a 230-foot tunnel, police said. The PKK has been fighting for autonomy for the southeastern region of Turkey for three decades, and the conflict has killed more than 40,000 people.

**United Kingdom:** Officials at Ford Open Prison objected to some prisoners' alternative to eating meals in the dining hall or purchasing food from the canteen. Apparently the grounds of the facility were overrun by thousands of wild rabbits, and prisoners had started killing them and cooking the

meat in microwaves. Prison officials announced a "bunny boiling bar" in September 2013, saying killing and eating the rabbits was causing "distress to staff members."

**United Kingdom:** Brixton Prison made headlines when celebrity chef Gordon Ramsey helped prisoners set up the "Bad Boys Bakery," which now provides cakes to national coffee chains. On September 23, 2013, it was announced that the prison would expand its culinary program to include a 100-seat restaurant, open to the public and fully staffed by prisoners. The Clink Charity plans to make Brixton the home of a third training restaurant in the organization's award-winning program to equip prisoners with skills to help them secure post-release employment.

**Venezuela:** In the notoriously crowded Sabaneta prison in the western city of Maracaibo, a clash in an ongoing gang war

#### THE CELL BLOCK PRESENTS...

The Best Resource Directory for Prisoners \$20, The Art & Power of Letter Writing for Prisoners \$7, The Enemy of The State \$10, & other books prisoners love!!!  
For FREE info/flier, send SASE: TCB; POB 212; Folsom, CA 95763

#### 10% off all May and June orders

To thank you for your business in the recent months.  
It's truly been our pleasure.  
Haven't ordered yet? Don't wait!  
\$2 catalogue, order forms free.  
Intimate Love, LLC  
PO Box 1153, NYC, NY 10039

#### GET PUBLISHED, \$ FOR SCHOOL

Inmate anthology seeks authors & cover artist. Send up to 2 poems (must be signed) & 1 prose piece (10pg max) & cover art to NFC, 1957 W Burnside #1660, Port OR 97209 by July 15. Published authors will earn \$ for NFC classes

#### MIDNIGHT EXPRESS BOOKS

THE PREFERRED & ONLY FULL TIME company helping inmate authors publish books for 10+ years.  
PO Box 69, Dept PLN,  
Berryville, AR 72616  
Midnightexpressbooks.com  
Corrlinks: MEBooks1@yahoo.com

#### FREE BOOK CATALOG & PRAYER CARD

Send \$1 for S&H or  
SASE w/2 (two) US Forever Stamps  
Fiction, Nonfiction, Dictionary,  
Pastimes & Religious books  
English & Spanish.  
Jaguar Books 6881 Stanton Ave #F  
Buena Park CA 90621

#### Education Behind Bars Newsletter

Free electronic newsletter  
For prisoners viaCorrLinks.  
Add news@prisonlawblog.com  
to subscribe. The content  
is curated specifically  
for prisoners.

#### SURROGATE SISTERS

Celebrating 18+Years in Business  
No Games. We Sell Photos of Sexy  
Women, Gifts for Loved Ones,  
Erotic Stories & Pen-Pal Service  
Free Info & Flyer Send SASE to:  
Surrogate Sister - PN  
PO Box 95043, Las Vegas NV 89193

#### Prisonerinmatefamilyservice.com

Send a SASE for a free catalog;  
PO Box 1852 Pismo Beach, Ca 93448  
We buy stamps- 7.50 a book;  
Single stamps .25 cents; Amazon  
Orders, copies of photos/artwork  
And SO much more!  
FamilyInmateSev@aol.com

#### LOCAL PHONE NUMBERS \$2.50/MO.

USA anywhere 5¢/min. To MX 15¢  
Great rates all over the world!  
No signup fee, no hidden fees!  
Refer new cust, 300 free mins!  
[www.FreedomLine.net](http://www.FreedomLine.net) to sign up  
or write FreedomLine, Box 7-WCB  
C'ville IN 47331. Save BIG \$\$\$!

#### A DEGREE/ORDINATION FROM PRISON

Correspondence Courses via mail  
INT'L CHRISTIAN COLLEGE&SEMINARY  
PO BOX 530212 Debary, FL 32753-0212  
Associates thru PhD credit for  
Life Experience \*ACCREDITED\*  
Tuition as Low as \$19.95 a month  
Send SASE for a Free Evaluation

#### Celebrity Photos For Sale:

Send self addressed stamped  
envelope for lists. Name stars  
you would like to order photos of.  
Start your collection today!  
Photoworld-PLN  
PO Box 401016  
Las Vegas, Nv. 89140

#### #1 PHOTO FORWARDING SERVICE

\*\*SPECIAL \*\* \$25.00 for 60 Photos!  
Email & Text your photos 2 us  
We Print & Mail them 2 YOU!  
infolincs.us (4 more info)  
Email: [infolincs@centurylink.net](mailto:infolincs@centurylink.net)  
Check/\$\$ Order: InfoLINCS, LLC  
PO Box 644, Shady Cove, OR 97539

left at least 16 prisoners dead, government officials reported on September 17, 2013. When armed police stormed the facility following the riot, they were surprised to find that prisoners were keeping a menagerie of exotic animals. According to *La Verdad*, a regional newspaper, the animals included an ocelot, raccoons, macaws and several caimans. More than a dozen farm animals were also recovered, as well as a large number of purebred dogs such as mastiffs, Siberian

huskies and Yorkshire terriers.

**Vermont:** Windsor County State's Attorney Michael Kainen called his September 2013 plea deal with former prison guard Leanne Salls "an exercise in prosecutorial discretion." Initially charged with sexual exploitation of an inmate, Salls became pregnant and gave birth as a result of her relationship with an unidentified prisoner. "This is a single mother who has a child," said Kainen. "I wasn't comfortable making her a rapist." Salls ultimately pleaded guilty to a misdemeanor charge of prohibited acts and received a one-year

deferred sentence.

**Wisconsin:** Former Black River Correctional Center sergeant Gregg R. Twesme, 47, pleaded guilty on September 13, 2013 to two misdemeanor counts of fourth-degree sexual assault. Twesme used his position to take sexual advantage of two male prisoners, telling one victim he would have him sent to a maximum-security facility if he reported the incident, according to the criminal complaint. Black River Superintendent Dave Andraska said Twesme was no longer employed at the prison; it was unclear whether he quit or had been fired. ■

## Criminal Justice Resources

### **ACLU National Prison Project**

Handles state and federal conditions of confinement claims affecting large numbers of prisoners. Publishes the NPP Journal (available online at: [www.aclu.org/national-prison-project-journal-fall-2011](http://www.aclu.org/national-prison-project-journal-fall-2011)) and the Prisoners' Assistance Directory (write for more information). Contact: ACLU NPP, 915 15th St. NW, 7th Fl., Washington, DC 20005 (202) 393-4930. [www.aclu.org/prisons](http://www.aclu.org/prisons)

### **Amnesty International**

Compiles information about prisoner torture, beatings, rape, etc. to include in reports about U.S. prison conditions; also works on death penalty issues. Contact: Amnesty International, 5 Penn Plaza, New York NY 10001 (212) 807-8400. [www.amnestyusa.org](http://www.amnestyusa.org)

### **Center for Health Justice**

Formerly CorrectHELP. Provides information related to HIV in prison – contact them if you are not receiving proper HIV medication or are denied access to programs due to HIV status. Contact: CHJ, 900 Avila Street, Suite 102, Los Angeles, CA 90012. HIV Hotline: (214) 229-0979 (collect calls from prisoners OK). [www.centerforhealthjustice.org](http://www.centerforhealthjustice.org)

### **Centurion Ministries**

Works to exonerate the wrongfully convicted, in both cases involving DNA evidence and those that do not. Centurion only takes 1-2 new cases a year involving actual innocence. They do not consider accidental death or self-defense murder cases, he said/she said rape cases, or child abuse or child sex abuse cases unless there is physical evidence. All case inquiries must be from the prisoner involved, in writing. Contact: Centurion Ministries, 221 Witherspoon Street, Princeton, NJ 08542 (609) 921-0334. [www.centurionministries.org](http://www.centurionministries.org)

### **Critical Resistance**

Seeks to build an international movement to abolish the Prison Industrial Complex, with offices in Florida, California, New York, Texas and Louisiana. Publishes The Abolitionist newsletter. Contact: Critical Resistance, 1904 Franklin Street #504, Oakland, CA 94612 (510) 444-0484. [www.criticalresistance.org](http://www.criticalresistance.org)

### **The Exoneration Project**

The Exoneration Project is a non-profit organization dedicated to working to free prisoners who were wrongfully convicted. The Project represents innocent individuals in post-conviction legal proceedings; typical cases involve DNA testing, coerced confessions, police misconduct, the use of faulty evidence, junk science and faulty eyewitness testimony, and ineffective assistance of counsel claims. Contact: The Exoneration Project, 312 North May Street, Suite 100, Chicago, Illinois 60607 (312) 789-4955. [www.exonerationproject.org](http://www.exonerationproject.org)

### **Family & Corrections Network**

Primarily provides online resources for families of prisoners related to parenting, children of prisoners, prison visitation, mothers and fathers in prison, etc. Contact: F&CN, 93 Old York Road, Suite 1 #510, Jenkintown, PA 19046 (215) 576-1110. [www.fcnetwork.org](http://www.fcnetwork.org)

### **FAMM**

FAMM (Families Against Mandatory Minimums) publishes the FAMMgram three times a year, which includes information about injustices resulting from mandatory minimum laws with an emphasis on federal laws. Recommended donation of \$10 for a subscription. Contact: FAMM, 1612 K Street NW #700, Washington, DC 20006 (202) 822-6700. [www.famm.org](http://www.famm.org)

### **The Fortune Society**

Provides post-release services and programs for prisoners in the New York City area and occasionally publishes Fortune News, a free publication for prisoners that deals with criminal justice issues, primarily in New York. Contact: The Fortune Society, 29-76 Northern Blvd., Long Island City, NY 11101 (212) 691-7554. [www.fortunesociety.org](http://www.fortunesociety.org)

### **Innocence Project**

Provides advocacy for wrongly convicted prisoners whose cases involve DNA evidence and are at the post-conviction appeal stage. Maintains an online list of state-by-state innocence projects. Contact: Innocence Project, 40 Worth St., Suite 701, New York, NY 10013 (212) 364-5340. [www.innocenceproject.org](http://www.innocenceproject.org)

### **Just Detention International**

Formerly Stop Prisoner Rape, JDI seeks to end sexual violence against prisoners. Provides counseling resources for imprisoned and released rape survivors and activists for almost every state. Contact: JDI, 3325 Wilshire Blvd. #340, Los Angeles, CA 90010 (213) 384-1400. [www.justdetention.org](http://www.justdetention.org)

### **Justice Denied**

Although no longer publishing a print magazine, Justice Denied continues to provide the most comprehensive coverage of wrongful convictions and how and why they occur. Their content is available online, and includes all back issues of the Justice Denied magazine and a database of more than 3,000 wrongly convicted people. Contact: Justice Denied, P.O. Box 68911, Seattle, WA 98168 (206) 335-4254. [www.justicedenied.org](http://www.justicedenied.org)

### **National CURE**

Citizens United for Rehabilitation of Errants (CURE) is a national organization with state and special interest chapters that advocates for rehabilitative opportunities for prisoners and less reliance on incarceration. Publishes the CURE Newsletter. \$2 annual membership for prisoners. Contact: CURE, P.O. Box 2310, National Capitol Station, Washington, DC 20013 (202) 789-2126. [www.curenational.org](http://www.curenational.org)

### **November Coalition**

Publishes the Razor Wire, a bi-annual newsletter that reports on drug war-related issues, releasing prisoners of the drug war and restoring civil rights. A subscription is \$10 for prisoners and \$30 for non-prisoners. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 684-1550. [www.november.org](http://www.november.org)

### **Prison Activist Resource Center**

PARC is a prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, able-ism, heterosexism and classism, specifically within the Prison Industrial Complex. PARC produces a free resource directory for prisoners, and supports activists working to expose and end the abuses of the Prison Industrial Complex and mass incarceration. Contact: PARC, P.O. Box 70447, Oakland, CA 94612 (510) 893-4648. [www.prisonactivist.org](http://www.prisonactivist.org)

# Prison Legal News Book Store

Fill in the boxes next to each book you want to order, indicating the quantity and price. Enter the Total on the Order Form on the next page.  
**FREE SHIPPING on all book / index orders OVER \$50 (effective 4-1-2014 until further notice). \$6.00 S/H applies to all other book orders.**

## SUBSCRIBE TO PLN FOR 4 YEARS AND CHOOSE ONE BONUS!

1. SIX (6) FREE ISSUES FOR 54 TOTAL! OR
2. PRISON PROFITEERS (A \$24.95 VALUE!) OR
3. THE HABEAS CITEBOOK (A \$49.95 VALUE!)

**Prison Profiteers**, edited by Paul Wright and Tara Herivel, 323 pages. \$24.95. This is the third book in a series of Prison Legal News anthologies that examines the reality of mass imprisonment in America. *Prison Profiteers* is unique from other books because it exposes and discusses who profits and benefits from mass imprisonment, rather than who is harmed by it and how. 1063

**The Habeas Citebook: Ineffective Assistance of Counsel**, by Brandon Sample, PLN Publishing, 200 pages. \$49.95. This is PLN's second published book, written by federal prisoner Brandon Sample, which covers ineffective assistance of counsel issues in federal habeas petitions. Includes hundreds of case citations! 1078

**Prison Nation: The Warehousing of America's Poor**, edited by Tara Herivel and Paul Wright, 332 pages. \$35.95. PLN's second anthology exposes the dark side of the 'lock-em-up' political agenda and legal climate in the U.S. 1041

**The Ceiling of America, An Inside Look at the U.S. Prison Industry**, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. \$22.95. PLN's first anthology presents a detailed "inside" look at the workings of the American justice system. 1001

**Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada**, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, PLN Publishing, 221 pages. \$49.95. Written by Missouri prisoner Jon Marc Taylor, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, para-legal and college courses by mail. 1071

**The Criminal Law Handbook: Know Your Rights, Survive the System**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 608 pages. \$39.99. Explains what happens in a criminal case from being arrested to sentencing, and what your rights are at each stage of the process. Uses an easy to understand question-and-answer format. 1038

**Represent Yourself in Court: How to Prepare & Try a Winning Case**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 528 pages. \$39.99. Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. The authors explain what to say in court, how to say it, etc. 1037

**Law Dictionary**, Random House Webster's, 525 pages. \$19.95. Comprehensive up-to-date law dictionary explains more than 8,500 legal terms. Covers civil, criminal, commercial and international law. 1036

**The Blue Book of Grammar and Punctuation**, by Jane Straus, 110 pages. \$14.95. A guide to grammar and punctuation by an educator with experience teaching English to prisoners. 1046

**Legal Research: How to Find and Understand the Law**, by Stephen Elias and Susan Levinkind, 568 pages. \$49.99. Comprehensive and easy to understand guide on researching the law. Explains case law, statutes and digests, etc. Includes practice exercises. 1059

**Deposition Handbook**, by Paul Bergman and Albert Moore, Nolo Press, 352 pages. \$34.99. How-to handbook for anyone who conducts a deposition or is going to be deposed. 1054

**Criminal Law in a Nutshell**, by Arnold H. Loewy, 5th edition, 387 pages. \$43.95. Provides an overview of criminal law, including punishment, specific crimes, defenses & burden of proof. 1086

## SUBSCRIBE TO PLN FOR 3 YEARS AND CHOOSE ONE BONUS!

1. FOUR (4) FREE ISSUES FOR 40 TOTAL! OR
2. PROTECTING YOUR HEALTH AND SAFETY (A \$10.00 VALUE!)

**Protecting Your Health and Safety**, by Robert E. Toone, Southern Poverty Law Center, 325 pages. \$10.00. This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how to enforce your rights, including through litigation. 1060

**Spanish-English/English-Spanish Dictionary**, 2nd ed. Random House. \$15.95. Spanish-English and English-Spanish. 60,000+ entries from A to Z; includes Western Hemisphere usage. 1034a

**Writing to Win: The Legal Writer**, by Steven D. Stark, Broadway Books/Random House, 283 pages. \$19.95. Explains the writing of effective complaints, responses, briefs, motions and other legal papers. 1035

**Actual Innocence: When Justice Goes Wrong and How to Make it Right**, updated paperback ed., by Barry Scheck, Peter Neufeld and Jim Dwyer, 403 pages. \$16.00. Describes how criminal defendants are wrongly convicted. Explains DNA testing and how it works to free the innocent. Devastating critique of police and prosecutorial misconduct. 1030

**Webster's English Dictionary**, Newly revised and updated, Random House. \$8.95. 75,000+ entries. Includes tips on writing and word usage, and has updated geographical and biographical entries. Includes recent business and computer terms. 1033

**Everyday Letters for Busy People**, by Debra Hart May, 287 pages. \$18.99. Hundreds of sample letters that can be adapted for most any purpose, including letters to government agencies and officials. Has numerous tips for writing effective letters. 1048

**Roget's Thesaurus**, 717 pages. \$8.95. Helps you find the right word for what you want to say. 11,000 words listed alphabetically with over 200,000 synonyms and antonyms. Sample sentences and parts of speech shown for every main word. Covers all levels of vocabulary and identifies informal and slang words. 1045

**Beyond Bars, Rejoining Society After Prison**, by Jeffrey Ian Ross, Ph.D. and Stephen C. Richards, Ph.D., Alpha, 240 pages. \$14.95. *Beyond Bars* is a practical and comprehensive guide for ex-convicts and their families for managing successful re-entry into the community, and includes information about budgets, job searches, family issues, preparing for release while still incarcerated, and more. 1080

**Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A.**, by Mumia Abu Jamal, City Lights Publishers, 280 pages. \$16.95. In *Jailhouse Lawyers*, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned-advocates who have learned to use the court system to represent other prisoners. 1073

**With Liberty for Some: 500 Years of Imprisonment in America**, by Scott Christianson, Northeastern University Press, 372 pages. \$18.95. The best overall history of the U.S. prison system from 1492 through the 20th century. A must-read for understanding how little things have changed in U.S. prisons over hundreds of years. 1026

**Complete GED Preparation**, by Steck-Vaughn, 922 pages. \$24.99. This useful handbook contains over 2,000 GED-style questions to thoroughly prepare students for taking the GED test. It offers complete coverage of the revised GED test with new testing information, instructions and a practice test. 1099

**\* ALL BOOKS SOLD BY PLN ARE SOFTCOVER / PAPERBACK \***

**Hepatitis and Liver Disease: What You Need to Know**, by Melissa Palmer, MD, 457 pages. **\$17.95.** Describes symptoms & treatments of hepatitis B & C and other liver diseases. Includes medications to avoid, what diet to follow and exercises to perform, plus a bibliography. 1031 ☐

**Arrested: What to Do When Your Loved One's in Jail**, by Wes Denham, 240 pages. **\$16.95.** Whether a defendant is charged with misdemeanor disorderly conduct or first-degree murder, this is an indispensable guide for those who want to support family members, partners or friends facing criminal charges. 1084 ☐

**Prisoners' Self-Help Litigation Manual**, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 960 pages. **\$39.95.** The premiere, must-have "Bible" of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Highly recommended! 1077 ☐

**How to Win Your Personal Injury Claim**, by Atty. Joseph Matthews, 7th edition, NOLO Press, 304 pages. **\$34.99.** While not specifically for prison-related personal injury cases, this book provides comprehensive information on how to handle personal injury and property damage claims arising from accidents. 1075 ☐

**Sue the Doctor and Win! Victim's Guide to Secrets of Malpractice Lawsuits**, by Lewis Laska, 336 pages. **\$39.95.** Written for victims of medical malpractice/neglect, to prepare for litigation. Note that this book addresses medical malpractice claims and issues in general, not specifically related to prisoners. 1079 ☐

**Advanced Criminal Procedure in a Nutshell**, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **\$43.95.** This text is designed for supplemental reading in an advanced criminal procedure course on the post-investigation processing of a criminal case, including prosecution and adjudication. 1090 ☐

**Our Bodies, Ourselves**, by The Boston Women's Health Book Collective, 944 pages. **\$26.00.** This book about women's health and sexuality has been called "America's best-selling book on all aspects of women's health," and is a great resource for women of all ages. 1082 ☐

**Arrest-Proof Yourself**, by Dale Carson and Wes Denham, 288 pages. **\$14.95.** This essential "how not to" guide written by an ex-cop explains how to act and what to say when confronted by the police to minimize the chances of being arrested and avoid additional charges. Includes information on basic tricks that police use to get people to incriminate themselves. 1083 ☐

**Nolo's Plain-English Law Dictionary**, by Gerald N. Hill and Kathleen T. Hill, 496 pages. **\$29.99.** Find terms you can use to understand and access the law. Contains 3,800 easy-to-read definitions for common (and not so common) legal terms. 3001 ☐

**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFave, 7th edition, 603 pages. **\$43.95.** Intended for use by law students, this is a succinct analysis of constitutional standards of major significance in the area of criminal procedure. 1085 ☐

**A Dictionary of Criminal Law Terms** (Black's Law Dictionary® Series), by Bryan A. Garner, 768 pages. **\$33.95.** This handbook contains police terms such as preventive detention and protective sweep, and phrases from judicial-created law such as independent-source rule and open-fields doctrine. A good resource to help navigate your way through the maze of legal language in criminal cases. 1088 ☐

**PLN Cumulative Index.** **\$22.50 each.** PLN Article Indexes provide detailed information about all PLN articles, including title, author, issue, page number, topics covered, citations, and if it is state, BOP or jail specific. Can be searched on over 500 subjects such as medical neglect or sexual assault. Circle the index(es) you are ordering: **1990-1995, 1996-1998, 1999-2001, 2002-2004** (more recent indexes not yet available) ☐

### Subscription Rates

	1 year	2 years	3 years	4 years
<b>Prisoners</b>	<b>\$30</b>	<b>\$ 60</b>	<b>\$ 90</b>	<b>\$120</b>
<b>Individuals</b>	<b>\$35</b>	<b>\$ 70</b>	<b>\$105</b>	<b>\$140</b>
<b>Professionals</b>	<b>\$90</b>	<b>\$180</b>	<b>\$270</b>	<b>\$360</b>

(Attorneys, agencies, libraries)

### Subscription Bonuses

**2 years** - 2 bonus issues for 26 total issues  
**3 years** - 4 bonus issues (40 total) or a bonus book as listed on pg. 61  
**4 years** - 6 bonus issues (54 total) or a bonus book as listed on pg. 61

(All subscription rates and bonus offers are valid as of 4-1-2014)



Purchase with Visa, MasterCard, AmEx or Discover by phone: **561-360-2523**

Or buy books and subscriptions online: **www.prisonlegalnews.org**



### Mail Payment and Order to:

Prison Legal News  
P.O. Box 1151  
Lake Worth, FL 33460

All purchases must be pre-paid. Prisoners can pay with new first-class stamps (strips or books only, no single stamps) or pre-stamped envelopes, if allowed by institutional policies.

Please Change my Address to what is entered below ☐

### Mail Order To:

Name: \_\_\_\_\_

DOC #: \_\_\_\_\_

Suite/Cell: \_\_\_\_\_

Agency/Inst: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

### Subscribe to Prison Legal News

**\$ Amount**

6 month subscription (prisoners only) - \$18 \_\_\_\_\_

1 yr subscription (12 issues) \_\_\_\_\_

2 yr subscription (2 bonus issues for 26 total!) \_\_\_\_\_

3 yr sub (write below which FREE book you want) \_\_\_\_\_

or 4 bonus issues for 40 issues total! \_\_\_\_\_

4 yr sub (write below which FREE book you want) \_\_\_\_\_

or 6 bonus issues for 54 issues total! \_\_\_\_\_

Single back issue or sample copy of PLN - \$5.00 each \_\_\_\_\_

### Books or Index Orders

(No S/H charge on 3 & 4-year sub free books OR book orders OVER \$50!) **Qty.**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Add \$6.00 S/H to BOOK ORDERS UNDER \$50**

(PLN subs do not count towards \$50 for free S/H for book orders)

**FL residents ONLY add 6% to Total Book Cost** \_\_\_\_\_

**Total Amount Enclosed:** \_\_\_\_\_

**\* NO REFUNDS on PLN subscription or book / index orders after orders have been placed. \***

**\* We are not responsible for incorrect addresses or address changes after orders have been placed. \***



~ THE SENZA COLLECTION ~

SENZA SPECIALIZES IN PROVIDING YOU SEVERAL CHOICES  
ALL NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY – OR – NON NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY  
WE HAVE DIVIDED OUR CATALOGS INTO THESE CATEGORIES:

**CAUCASIAN/AFRICAN-AMERICAN/HISPANIC/ASIAN/MIXED HOTTIES**

EACH PAGE OF OUR CATALOGS HAS 99 GLORIOUSLY SEDUCTIVE LADIES POSING JUST FOR YOUR ENJOYMENT.

OVER 250 CATALOGS TO COLLECT AT JUST \$2.50 PER CATALOG

HERE'S A LITTLE FREEBIE FROM SENZA TO YOU!!!

ORDER YOUR FREE SENZA "99 HOTTIES" SAMPLE CATALOG

JUST SEND US TWO U.S. FOREVER OR FIRST CLASS STAMPS AND A SELF ADDRESSED STAMPED ENVELOPE TO:

**SENZA**

FREE CATALOG OFFER

**P.O. BOX 5840**

**BALTIMORE, MD 21282**

**AND FOR THOSE THAT JUST CANNOT WAIT...TAKE ADVANTAGE OF THIS LIMITED TIME OFFER**

**SENZA'S INTRODUCTORY SPECIAL \*\*\*DIRTY DOZEN\*\*\***

\$19.99 GETS YOU ALL THIS + FREE SHIPPING AND HANDLING

12 EYE POPPING CATALOGS! EACH CATALOG HAS 99 PICS TO CHOOSE FROM ON EACH PAGE

PLUS

12 4X6 PRINTS FROM OUR MIXED HOTTIES SELECTION TO SHOW OFF SENZA'S 4X6'S PRINT QUALITY.

**ALL FOR JUST \$19.99**

**REMEMBER YOU MUST: SPECIFY NUDE OR NON-NUDE ON YOUR ORDER**

**SPECIFY YOUR INSTITUTIONS RESTRICTIONS AS TO THE NUMBER OF PRINTS ALLOWED IN ONE ENVELOPE.**

**SENZA CORPORATE POLICIES – PLEASE REVIEW THEM CAREFULLY**

**ALL SENZA COLLECTION IMAGES ARE SOLD AT A FLAT PRICE OF 0.35 CENTS EACH.**

ANYONE WISHING TO PURCHASE 1000 + PRINTS AT ONE TIME WILL BE GIVEN A FLAT PRICE OF 0.30 CENTS PER IMAGE.

**SENZA HAS A MINIMUM ORDER REQUIREMENT OF: \$15.00 THIS DOESN'T INCLUDE S&H CHARGES.**

**SHIPPING AND HANDLING CHARGES ARE AS FOLLOWS:**

**1 – 5 4x6 PRINTS – \$1.00 PER ENVELOPE / 6 – 15 4x6 PRINTS – \$1.50 PER ENVELOPE / 16 – 25 4x6 PRINTS – \$2.00 PER ENVELOPE**

YOU MUST NOTIFY SENZA ON THE ORDER FORM, THE MAXIMUM NUMBER OF PRINTS YOUR INSTITUTION WILL PERMIT IN EACH ENVELOPE

**SENZA WILL ACCEPT U.S. FIRST CLASS POSTAGE STAMPS AT THE RATE OF \$5.00 FOR EACH BRAND NEW FLAT BOOK OF 20 STAMPS.**

YOU ARE REQUIRED TO KNOW YOUR INSTITUTIONS POLICIES REGARDING WHAT IMAGES ARE ACCEPTABLE INTO YOUR FACILITY INSTITUTION. THERE ARE NO EXCEPTIONS TO THIS POLICY. RETURNED/REJECTED MAIL – YOU WILL HAVE 15 BUSINESS DAYS TO SEND US A SASE WITH A STREET ADDRESS IN WHICH TO MAIL YOUR RETURNED/REJECTED PRINTS.

AFTER 15 DAYS THE PRINTS ARE RETURNED TO OUR INVENTORY.

ALL SALES ARE FINAL/NO REFUNDS OR EXCHANGES

## Great Self-Help Book Deals From Prison Legal News!



**Order from Prison Legal News**

Add \$6 shipping for orders under \$50

**Prison Legal News**

**PO Box 1151**

**Lake Worth, FL 33460**

**Phone: 561-360-2523**

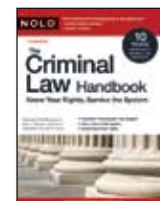
**www.prisonlegalnews.org**

### How to Win Your Personal Injury Claim

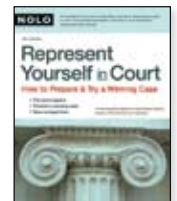
\$34.99

*How to Win Your Personal Injury Claim* shows you how to handle almost every accident situation, and guides you through the insurance claim process, step by step. Learn how to:

- protect your rights after an accident
- determine what your claim is worth
- handle a property-damage claim
- deal with uncooperative doctors, lawyers and insurance companies
- counter the special tactics insurance companies use
- prepare a claim for compensation
- negotiate a full and fair settlement
- stay on top of your case if you hire a lawyer



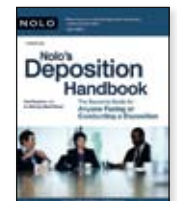
The Criminal Law Handbook  
\$39.99



Represent Yourself in Court  
\$39.99



Legal Research  
\$49.99



Nolo's Deposition Handbook  
\$34.99

**NOLO**  
**YOUR LEGAL COMPANION**





## Prison Legal News

PO Box 1151  
Lake Worth FL 33460

Change Service Requested

Non-Profit Org.  
U.S. Postage  
PAID  
Portland OR  
Permit No. 3142

### Subscription Renewal

Subscriptions expire after the issue shown on the label is mailed. For example, if the label says: EXPIRES 02/2015, then the subscription expires after the February 2015 issue is mailed. Please renew at least 2 months before the expiration date. IF THE LABEL SAYS **EXPIRES: 05/2014** THIS IS YOUR LAST ISSUE. Please renew immediately to avoid missing any issues.

### Change of Address

If you move or are transferred, please notify PLN as soon as possible so your issues can be mailed to your new address! PLN only accepts responsibility for sending an issue to the address provided at the time an issue is mailed!



# PRISONLEGALNEWS.org

**Dedicated to Protecting Human Rights**

>>FREE Data Search |

Decisions

Investigations

Audits

Publications

Cases

Verdicts

Settlements

**If you need to know about prisons and jails or are litigating a detention facility case, you can't afford not to subscribe to our website!**

**Online subscribers get unlimited, 24-hour a day access to the website and its content!**

 **Sign up for PLN's FREE listserv to receive prison and jail news and court rulings by e-mail.**

- ▶ PLN's website offers all issues of PLN in both searchable database and PDF formats. Issues are indexed and posted as soon as they go to press.
- ▶ Publications section has numerous downloadable government reports, audits and investigations from around the country.
- ▶ Full text decisions of thousands of court cases, published and unpublished.
- ▶ All content is easy to print for downloading and mailing to prisoners.
- ▶ Most complete collection of prison and jail related verdicts and settlements anywhere.
- ▶ Order books, print subscriptions and make donations on line.

- ▶ Brief bank with a wide assortment of winning motions, briefs, complaints and settlements.
- ▶ Links to thousands of prison, jail, criminal justice and legal websites around the world.
- ▶ Thousands of articles and cases, all fully indexed by more than 500 subjects, searchable by case name, case year, state of origin, court, author, location, case outcome, PLN issue and key word search.
- ▶ Search free, pay only if you find it!
- ▶ The highest quality, most comprehensive prison litigation news and research site in the world.

**Affordable rates to meet your budget  
\$19.95 per month • \$149.95 per year**

**Subscribe to Prison Legal News Online! <http://www.prisonlegalnews.org>**

# Prison Legal News

VOL. 25 No. 6  
ISSN 1075-7678

*Dedicated to Protecting Human Rights*

June 2014

## Consequences of California's Realignment Initiative

*by Christopher Petrella and Alex Friedmann*

**D**AVID HARVEY, DISTINGUISHED PROFESSOR of Anthropology and Geography at the City University of New York, writes that "capitalism never resolves its problems; it simply rearranges them geographically." The same can be said of California's almost three-year-old Public Safety Realignment initiative – legislation designed to reduce the Golden State's prison population, in part, by transferring thousands of prisoners from state facilities to county jails.

Sadly, Realignment has merely shifted the very forms of human suffering it was originally intended to relieve. This – the paradox of modern penal reform – adds a crucial dimension to discussions about who, why and how we punish offenders. Clearly, shifting a criminal justice crisis isn't the same as solving one.

### INSIDE

From the Editor	12
The End of Mass Incarceration?	14
Jails Sued Over Debit Card Fees	20
No Remedy for Military Torture	26
"Scared Straight" Still Popular	28
CA's Lethal Injection Protocol Invalid	34
5.85 Million Disenfranchised in U.S.	40
BOP Mistakenly Serves Pet Food	42
New Orleans Jail Class-action Suit	44
CCA Guard Killed in Riot on Hit List	48
Prison Industry Programs Praised	50
New York Sells Closed Prisons	54
News in Brief	56

### The Realignment Initiative

SINCE AT LEAST 2011, THE STATE OF CALIFORNIA has been the epicenter of contemporary prison reform in the United States. The U.S. Bureau of Justice Statistics has noted that 70% of the total decrease in state prison populations from 2010 to 2011 was a direct result of California's Public Safety Realignment initiative.

On May 23, 2011, the U.S. Supreme Court upheld an order by a three-judge federal court requiring the state to reduce its prison population to 137.5% of design capacity within two years to alleviate overcrowding that resulted in unconstitutional medical and mental health care. [See: *PLN*, June 2011, p.1]. California Governor Jerry Brown had called the court's order "a blunt instrument that does not recognize the imperatives of public safety, nor the challenges of incarcerating criminals, many of whom are deeply disturbed."

At the time, California Department of Corrections and Rehabilitation (CDCR) facilities were operating around 180% of capacity. In response to the Supreme Court's ruling, the state legislature and Governor Brown enacted two laws – AB 109 and AB 117 – designed to reduce the number of prisoners housed in state facilities. The initiative was implemented on October 1, 2011.

Realignment, as it's commonly called, was intended to decrease California's prison population by shifting "new non-violent, non-serious, and non-sexual offenders" from state prisons to county jails, while concurrently reforming the state's parole system. Under the initiative, such prisoners released from local jails are placed on county-directed post-release community supervision instead of state parole. For their

part, counties receive funding from the state to help with expanded jail and probation populations under Realignment.

The Public Policy Institute of California has estimated that Realignment was directly responsible for an 11,116-prisoner drop in the CDCR's population during the first three months the initiative was in effect. To date the state's prison system has shed around 25,000 prisoners; however, this has failed to satisfy the federal courts, falling roughly 9,600 prisoners short of the target population cap. [See: *PLN*, Aug. 2013, p.20].

In February 2014, following several postponements, the three-judge court over the *Plata v. Brown* litigation – the long-standing class-action suit that led to the Supreme Court ruling and ultimately to Realignment – gave California two more years to lower the CDCR's population to 137.5% of design capacity. [See: *PLN*, June 2013, p.36].

While the overall downward trend in California's prison population appears auspicious at first blush, it's impossible to fully evaluate the Realignment initiative without considering the impact it has had on local jails.

As a result of Realignment, county jails now house prisoners sentenced to more than a year of incarceration – offenders who previously would have been sent to state prisons. Since the Realignment initiative was first implemented, California's jail population has predictably grown; the average daily population in local jails has increased by at least 12% – roughly equivalent to 9,000 prisoners – following Realignment.

That is, around one-third of the total state prison population reduction effectively has been shifted to county facilities. Three

## **DON'T LET THE TIME DO YOU. STAY CONNECTED!**

**Guaranteed savings of up to 90%** on your long distance, out-of-state, and international calls from Federal prisons, county jails and State prisons.

### **Best Rates and Plans**

Multi-number Friends & Family Package for as little as \$10.00/month

More plans & more numbers than any operator -

### **No Hidden Fees**

**What We Say Is What You Pay** – NO additional “fees”, “charges” or “surcharges”

International calls are billed only on call acceptance. No bogus rounding

### **No Contracts, No Penalties, No Hassles**

No long term commitments – Service is always month – to – month. Cancel at anytime with NO penalties and NO cancellation fees with just a phone call or an e-mail.

### **Fast and EZ Setup**

We **ALWAYS** have numbers and can set up instantaneously online or on the phone.

## **Special Commitment, Civil Detention & Halfway House**

\$0.40 connection charge from payphones  
lowest in the business

Voice Mail and Call Recording options

Call, write, e-mail or have your loved ones check out our website for more information.

SP Telecom  
1220 Broadway - # 801-A  
New York, NY 10001  
[www.inmatefone.com](http://www.inmatefone.com)  
e-mail: [clients@inmatefone.com](mailto:clients@inmatefone.com)  
Español: [soporte@inmatefone.com](mailto:soporte@inmatefone.com)  
Call: 1(845)326-5300 (Collect calls are NOT accepted)  
Español: 1(845)342-8110 (Llamadas por cobrar no se aceptan)

Some restrictions apply. Plan availability depends on the Institution

## **NO PERMITA QUE EL TIEMPO LE SEPARÉ DE SU FAMILIA!**

**Garantizamos ahorros de hasta el 90%** en sus llamadas de larga distancia, entre estados, y en las llamadas internacionales desde prisiones federales, estatales y locales.

### **Los mejores Planes y Tarifas**

Plan para familias y amigos con varios números por tan solo \$10.00/ mes .

Más planes y números que ningún otro operador .

### **No hay letra pequeña**

**Lo Que Ves Es Lo Que Pagas**, NO hay ningún otro cargo extra.

Las llamadas internacionales solo se facturan cuando es aceptada por el familiar al otro lado del hilo telefónico.

**No hay contrato , permanencia ni ningún tipo de trabas .**

El servicio siempre se ofrece en base a un mes de duración pudiendo renovar el mismo todo los meses sin ningún cargo por la terminación del servicio y lo puede solicitar con una simple llamada de teléfono o con un correo electrónico (E-MAIL)

**La solicitud se puede hacer rápida y muy fácil .**

Nosotros siempre tenemos números y podemos procesar el registro inmediatamente en línea o por teléfono.

**Detenidos civiles en cárceles especiales y reclusos en camino a casas de medio camino le ofrecemos los siguientes servicios.**

\$0.40 de recargo desde teléfonos de prepago, la tarifa más baja en el sector .

Buzón de Voz y la posibilidad de grabar las llamadas .





## Prison Legal News

*a publication of the  
Human Rights Defense Center*  
[www.humanrightsdefensecenter.org](http://www.humanrightsdefensecenter.org)

### EDITOR

Paul Wright

### MANAGING EDITOR

Alex Friedmann

### COLUMNISTS

Michael Cohen, Kent Russell,

Mumia Abu Jamal

### CONTRIBUTING WRITERS

Matthew Clarke, John Dannenberg,

Derek Gilna, Gary Hunter,

David Reutter, Mark Wilson,

Joe Watson, Christopher Zoukis

### RESEARCH ASSOCIATE

Mari Garcia

### ADVERTISING DIRECTOR

Susan Schwartzkopf

### LAYOUT

Lansing Scott

### HRDC LITIGATION PROJECT

Lance Weber—General Counsel

Robert Jack—Staff Attorney

Sabarish Neelakanta—Staff Attorney

### PLN is a monthly publication.

A one year subscription is \$30 for prisoners, \$35 for individuals, and \$90 for lawyers and institutions. Prisoner donations of less than \$30 will be pro-rated at \$3.00/issue. Do not send less than \$18.00 at a time. All foreign subscriptions are \$100 sent via airmail. PLN accepts Visa and Mastercard orders by phone. New subscribers please allow four to six weeks for the delivery of your first issue. Confirmation of receipt of donations cannot be made without an SASE. PLN is a section 501 (c)(3) non-profit organization. Donations are tax deductible. Send contributions to:

**Prison Legal News**

**PO Box 1151**

**Lake Worth, FL 33460**

**561-360-2523**

**[info@prisonlegalnews.org](mailto:info@prisonlegalnews.org)**

**[www.prisonlegalnews.org](http://www.prisonlegalnews.org)**

PLN reports on legal cases and news stories related to prisoner rights and prison conditions of confinement. PLN welcomes all news clippings, legal summaries and leads on people to contact related to those issues.

Article submissions should be sent to - The Editor - at the above address. We cannot return submissions without an SASE. Check our website or send an SASE for writer guidelines.

Advertising offers are void where prohibited by law and constitutional detention facility rules.

PLN is indexed by the *Alternative Press Index*, *Criminal Justice Periodicals Index* and the *Department of Justice Index*.

## Consequences in California (cont.)

of the 10 largest jail systems in California have experienced increases of more than 15% in their average daily populations: Fresno (29.6%), Los Angeles (17.5%) and Riverside (18.6%). Further, as a result of Realignment, hundreds of offenders are serving lengthy sentences in jails instead of state prisons.

A February 2013 survey conducted by the California State Sheriffs' Association found that not only were 1,109 prisoners in county jails serving 5- to 10-year sentences, but 44 were serving terms of more than 10 years. San Diego County reported it had 145 prisoners serving between 5 and 10 years, while San Bernardino County said it had 105. The longest sentence reported was 43 years.

California's jail population is likely to continue to expand as prisoners with longer sentences accumulate in county jails due to Realignment. Longer sentences translate to lengthier stays, which in turn result in larger jail populations; in the short term this has generated a number of early releases due to lack of available bed space.

California has spent billions of dollars and decades in federal court due to poor conditions in its state prisons, but the problems it has been desperately trying to ameliorate are now trickling down to local governments as county jails are forced to deal with thousands of additional prisoners.

### Counties Face Lawsuits

RECENTLY, CALIFORNIA-BASED LAW FIRMS advocating for prisoners' rights have sued or threatened lawsuits against a number of counties due to Realignment. The suits allege that the egregious conditions that first led to legal intervention against the state's prison system – overcrowding, poor medical and dental care, and inadequate mental health treatment – are now being repeated at the county level.

Jails that were originally designed for short-term stays are now being flooded with thousands of new prisoners, many of whom are serving longer sentences and need robust rehabilitative services that counties currently do not have the capacity to provide. Fresno, Riverside, Alameda and Monterey counties have already been sued.

In September 2013, the California State Auditor issued a warning about Realignment: "The State does not currently have access to reliable and meaningful data concerning the realignment. As a result, the impact of realignment cannot be fully evaluated at this time. Even so, initial data indicate that local jails may not have adequate capacity and services to handle the influx of inmates caused by realignment. Until enough time has passed to allow the effectiveness and efficiency of realignment to be evaluated, we will consider it a state-wide high-risk issue."

Monterey County Sheriff Scott Miller described Realignment as "a masterful stroke by Governor Brown to shift all the state's prison problems to county jails." The Monterey County jail has become so crowded that he considered buying triple-stack bunk beds to handle the deluge of prisoners. Then a nearby state prison donated extra triple bunks it had used when prison overcrowding was at its peak.

Ironically, filling CDCR facilities with such bunk beds, including in gyms and other areas not intended for housing prisoners, was one of the conditions that persuaded the three-judge federal court to order a reduction in the state's prison population.

Nick Warner, legislative director of the California State Sheriffs' Association, said counties are concerned they will be exposed to the same liabilities under Realignment that the state has spent billions of dollars trying to resolve.

"They had problems before, but realignment makes it worse because people are spending more time in jail," said Don Specter, director of the Berkeley-based Prison Law Office, which represents state prisoners in the *Plata* litigation.

According to the Associated Press, a lawsuit filed by the Prison Law Office against Riverside County in March 2013 claims that "medical care is so poor in its jails that some of its 4,000 inmates go months without seeing a doctor. When they do, the lawsuit contends they receive only cursory medical exams, inadequate follow-up and are rarely referred to specialists even when outside care is clearly needed."

For example, the class-action suit describes the case of a female prisoner held at the Riverside County Jail who had Stage IV colon cancer. "Nobody paid attention to her complaints that the cancer had returned,"

## Consequences in California (cont.)

said Prison Law Office attorney Sara Norman. The lawsuit also notes that prisoners at the county's five jails "face cruel and inhumane deficits in medical and mental health care."

The suit asks the U.S. District Court to order the county "to make a laundry list of fixes, such as increased staffing, timely access to care, reliable screening and emergency-response procedures, and timely and adequate medication, supplies and mental health treatment," the *Press-Enterprise* reported.

The county responded by moving to dismiss the case, claiming that the prisoners who complained about inadequate health care had refused to take their medication and did not attend medical appointments. Further, the county argued that the

plaintiffs "also provided inaccurate and incomplete information about their medical history and conditions" when they first arrived at the jail and during subsequent meetings with medical staff. The suit, which does not seek monetary damages, remains pending. See: *Gray v. County of Riverside*, U.S.D.C. (C.D. Cal.), Case No. 5:13-cv-00444-VAP-OP.

The Prison Law Office has also filed a lawsuit against Fresno County, alleging that prisoners at the county jail are routinely denied treatment for physical or mental illnesses and dental problems, and are vulnerable to attacks from other prisoners as a result of the jail's poor design and inadequate staffing. According to CBS-Sacramento, Fresno County Sheriff Margaret Mims said she could not discuss the suit due to settlement discussions. See: *Hall v. County of Fresno*, U.S.D.C. (C.D. Cal.), Case No. 1:11-cv-02047-LJO-BAM.

"Since Fresno has radically cut back outpatient mental health services, the jail has become a costly dumping ground for people with mental illness who need care but cannot find it elsewhere," noted Rachel Scherer, an attorney with Disability Rights California.

In November 2012, Legal Services for Prisoners with Children sued Alameda County Sheriff Gregory J. Ahern over his jail's treatment of prisoners with disabilities, with both sides blaming the increase in disabled prisoners entering the jail since Realignment. "Unfortunately, you can't just knock down a wall and make handicapped-

accessible cells. It takes time," said sheriff's spokesman Sgt. J.D. Nelson. See: *Legal Services for Prisoners with Children v. Ahern*, Superior Court for the County of Alameda (CA), Case No. RG12656266.

The Monterey County Public Defender's Office filed a lawsuit in May 2013 to remedy substandard healthcare at the county jail that it claimed was "broken in every way." Calling the jail's medical and mental health care "woefully inadequate," the 72-page complaint includes a litany of allegations that, it says, combine with severe overcrowding to put the lives of both staff and prisoners at risk. The class-action suit alleges delays in medical treatment, deficient mental health care, inadequate suicide prevention measures, failure to provide reasonable accommodations for prisoners with disabilities and failure to protect prisoners from violence.

"It seems that our in-custody medical cases have been exacerbated due to realignment," said Monterey County Sheriff Scott Miller. "We haven't quantified it yet, but that seems to be the trend. It used to be when you were in county jail for six or eight months, you didn't need the full range of medical services."

"Monterey County has inadequate facilities and programs for inmates who use wheelchairs, are blind or have other disabilities, or are mentally ill," stated attorney Michael Bien with the San Francisco law firm of Rosen, Bien, Galvan and Grunfeld, which also represents the plaintiffs in the lawsuit. The defendants include Monterey

\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$  
\$ **FREE Pen-Pal Success Catalog** \$  
\$ **for more info send SASE to:** \$  
\$ **Superior Enterprises, Dept. JK** \$  
\$ **1247 Pondview Ave.** \$  
\$ **Akron, OH 44305-3340** \$  
\$ **Millionaire Prisoner Newsletter** \$  
\$ **for sample copy send** \$  
\$ **\$3 or 7<sup>F</sup>/c "Forever" Stamps** \$  
\$ **to address above!** \$  
\$ **(Sorry - No IL Prisoners)** \$  
\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$

### LAW OFFICES OF

**ELMER ROBERT KEACH, III**



Law Offices of Elmer Robert Keach, III, PC  
One Pine West Plaza, Suite 109  
Washington Avenue Extension  
Albany, NY 12205-5531  
518.434.1718  
www.keachlawfirm.com

Attorney Bob Keach  
NITA Master Advocate  
Member, Multi-Million Dollar Advocates Forum  
Outside Counsel, Prison Legal News  
National Practice

### Experienced Civil Rights Attorney dedicated to seeking justice for those who are incarcerated

*Custodial Death Cases • Wrongful Arrest and Incarceration*  
*Medical Indifference Cases • Corrections and Police Brutality*  
*Sexual Abuse and Assault • Illegal Strip Searches*  
*Class Actions • First Amendment Litigation (Northeast Only)*

Reasonable Hourly Rates for: Criminal Defense, Appeals,  
Post-Conviction Relief, Habeas Corpus

**WHEN YOU OR A LOVED ONE HAVE BEEN WRONGED,  
YOU HAVE A VOICE.**

Attorney Keach prefers all inquiries by mail to be typed, and limited to five pages.  
DO NOT SEND ORIGINAL DOCUMENTS OR ORIGINAL MEDICAL RECORDS.  
Make sure to exhaust your administrative remedies and comply with state law notice requirements, if applicable, to preserve state law intentional tort/negligence claims.

County, the sheriff's office and California Forensic Medical Group, a company that provides medical and mental health services at the county jail. See: *Hernandez v. County of Monterey*, U.S.D.C. (N.D. Cal.), Case No. 5:13-cv-02354-PSG.

Although Los Angeles County – the most populous county in the state – has not yet been sued, local officials are worried that federal authorities could “soon intervene in the operation of Los Angeles County’s outdated and [overcrowded] jail system.” Consequently, the county is in the process of replacing its aging Men’s Central Jail with a new facility.

### Violence Increases in Local Jails

THE ASSOCIATED PRESS REPORTED IN November 2013 that several counties had experienced a rise in prisoner violence due to increased jail populations under Realignment, based on data obtained from the ten largest county jail systems. “Some jails have seen violence dip, but the trend is toward more assaults since the law took effect on Oct. 1, 2011,” the AP stated.

The number of prisoner-on-prisoner assaults increased by 32% in the first year

after Realignment compared with the previous year. Assaults on staff increased by 27%. The rise in violence outpaced the rate of growing jail populations, which rose 14% in 2012.

“You’re seeing a little more gang influence inside the jails and a little more violence,” stated San Bernardino County Sheriff John McMahon. “Certainly, the sophistication level of these inmates is different.”

This is despite the fact that more serious offenders, including those convicted of violent and sexual felony offenses, are sent to state prisons.

“The violence is just being transferred to the local facilities from the state system,” said Fresno County Assistant Sheriff Tom Gattie, whose jail experienced a 48% increase in prisoner-on-prisoner assaults in the year after Realignment went into effect.

Comparably, the CDCR reported a 15% drop in prisoner-on-prisoner assaults and a 24% reduction in prisoner-on-staff assaults following Realignment, as the overcrowded state prison population declined.

Sacramento County’s jail system had

the greatest increase in assaults on staff, which rose 164% in spite of a fairly stable jail population.

In some cases, jails are unprepared for experienced prisoners serving longer sentences, including gang members. “We now have a hierarchy of inmates who have a prison culture,” stated Shasta County Sheriff Tom Bosenko.

“Jails were for 30-day stints, and the most you could do was a year. They weren’t built for people to exercise. They don’t have law libraries. They don’t have jobs,” said Don Specter with the Prison Law Office. “A lot of guys would rather go to prison just to have something to do.”

In June 2013, acknowledging that certain prisoners serving lengthy sentences did not belong in county jails, Governor Brown offered to return such offenders to the state prison system if counties would agree to take other state prisoners instead. The deal failed to go through, though, in part due to concerns that counties would send their worst, most expensive prisoners to CDCR facilities.

California Assemblyman Ken Cooley introduced legislation in February 2013

## |V|F|C| VOICE FREEDOM CALLS

# SEND AND RECEIVE VOICE MESSAGES FROM INSIDE PRISON.

### INTRODUCING VOICE FREEDOM CALLS

Get your own personal message number in any US area code.

Friends and family call your number to leave voice messages. You call your number and listen to messages, leave messages, and **place return calls – local or long distance, same price.**

And you can place multiple return calls from a single connect.

VFC works with all major prison and jail telecom providers in State, local, and County facilities. VFC is not available in Federal prisons.

**Inmates, have a friend or family member call our automated system at (800) 734-6026. In less than 10 minutes you’ll have your own phone number with voice messaging, long distance, and local calling.**

Get the most out of a single phone call. \$4.95/month, 25 cents per message, 15 cents per minute.

**Free brochure, send SASE to Voice Freedom Calls, 2442 NW Market Street #612, Seattle, WA 98107. Visit us at VoiceFreedomCalls.com**

## Learn The Law!



**It's a POWERFUL influence in your life.**

Choose education to help yourself and others. Blackstone's Independent Study Paralegal Program offers you the opportunity to be productive while serving time.

- Learn Civil & Criminal Law
- Learn Legal Research
- 110 Years of Legal Training Experience
- Study in Your Spare Time
- Affordable Tuition, Easy Payment Plan

**Only  
\$30.00  
Per Month**

☐ **Yes! I'd like to learn more** ☐ **Paralegal Course**  
**Please rush me FREE course information.**

Name \_\_\_\_\_ Doc# \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**Blackstone  
Career Institute**

Your tuition cost covers your entire program including all textbooks, study guides, exam and homework evaluation services, and your certificate.

**P.O. Box 3717 • Allentown, PA 18106**

## Consequences in California (cont.)

(AB 222) that would require prisoners who commit serious drug offenses – including those convicted of selling or transporting more than a kilo of cocaine, heroin or meth – to be sent to state prisons rather than local jails under Realignment.

“These county jail facilities were not set up for long-term incarceration,” he said. The bill died in January 2014.

### Impact on Crime Rates

THE PUBLIC POLICY INSTITUTE OF CALIFORNIA (PPIC) reported in December 2013 that in addition to reducing the state’s prison population, Realignment may also be having an impact on crime rates.

From 2011 to 2012 – the first year after Realignment was implemented – the state’s violent crime rate increased by 3.4% while property crime rose by 7.6%. However, the report found “no evidence that realignment has had an effect on the most serious offenses, murder and rape.” Although “California’s overall increases in violent crime between 2011 and 2012 appear to be part of a broader upward trend also experienced in other states,” the study noted there was “robust evidence that realignment is related to increased property crime.”

In the latter regard, an analysis by the PPIC indicated that further reductions in the state’s prison population under Realignment could cause property crime – which includes burglary, larceny and auto theft – to

increase by an additional 7 to 12%. The most significant impact was with respect to auto theft; the study estimated that due to more prisoners being released, Realignment was responsible for an additional 24,000 stolen vehicles per year.

“As realignment continues to unfold, California should consider safer, smarter, and more cost-effective approaches to corrections and crime prevention,” the report concluded.

“This is really interesting work by the PPIC,” said Matt Cate, director of the California State Association of Counties. “We’ve known for a long time that incarceration is very expensive, and for a lot of offenders it doesn’t effectively prevent criminal behavior in the long run. Under [Realignment], counties are using evidence-based programs that help individual offenders with basic housing needs, drug or alcohol treatment, and employment services. We know these programs help offenders, but often the individuals’ needs are great – especially with respect to behavioral health issues – and it takes time to develop local service capacity.”

Some critics have suggested using part of the money saved through Realignment to hire additional police officers to address increased crime rates. Of course, that would likely result in more arrests and thus more offenders returning to prison – offsetting the impact of the Realignment initiative vis-à-vis reducing the state’s prison population.

According to a December 23, 2013 press release from the CDCR, a study of

all prisoners who served their full sentences and were released during the 12-month period after Realignment went into effect found slightly lower re-arrest rates and static re-conviction rates. The rate of prisoners returning to prison was significantly lower post-Realignment due to new policies for offenders who violate the conditions of their supervised release.

The CDCR noted that “prior to Realignment, more than 60,000 felon parole violators returned to state prison annually, with an average length of stay of 90 days. Beginning on October 1, 2011, most parole violations are now served in county jails. Also, offenders newly convicted of certain low-level offenses serve their time in county jail.”

A report by the Center on Juvenile and Criminal Justice, released in January 2014, concluded there was no clear connection between the state’s Realignment initiative and crime rates, as some counties experienced an increase in crime and others reported a decrease.

### More Prison and Jail Beds

WHILE REALIGNMENT HAS REDUCED California’s prison population, it has not led to the closure of state prisons. Although initially slated for closure in 2012, the California Rehabilitation Center in Norco, which houses over 2,800 prisoners, remained open under a proposal announced by Governor Brown in August 2013. The proposal also involved sending more prisoners to out-of-state privately-operated

## Support Prison Legal News with these beautiful gifts!

CALL 561-360-2523, MAIL ORDER OR USE WEB FORM

[HTTP://WWW.PRISONLEGALNEWS.ORG/](http://www.prisonlegalnews.org/)



## Hand Embroidered Greeting Cards



Made by women prisoners in Cochabamba, Bolivia. Each card is individually made, no two are identical. The prisoners are paid a fair wage for each card and keep 100% of the pay to support themselves and their families. Local fair trade non-profits in Bolivia supply the materials for the cards. **\$6.**

**Hand Made Hemp Tote Bag** All natural hemp tote bag hand made in Vermont with the Prison Legal News logo on both sides, in red and black. Great for carrying books, groceries, and more! Stamped on the inside that no sweatshop, prison or child labor was used in its manufacture. **\$12.**

\$6 shipping and handling for orders under \$50.



facilities, as well as housing them in in-state private prisons.

"[W]orking with all the other stakeholders, I've come up with a plan that, in the short term, meets the capacity – not by letting thousands of people out but by finding additional places for incarceration, both in-state and out-of-state," Governor Brown stated.

However, Senate President Pro Tem Darrell Steinberg said the proposal was "a plan with no promise and no hope." Indeed, instead of closing prisons as other states have done in recent years, the CDCR is opening new facilities – including a 1,722-bed prison hospital in Stockton. [See: *PLN*, March 2013, p.56]. Further, in early January 2014, the state indicated it planned to build three medium-security housing units to hold more than 2,300 prisoners.

California officials have also contracted with Corrections Corporation of America to lease the company's 2,304-bed California City Correctional Center. Under the three-year, \$28.5 million-a-year lease agreement announced in October 2013, the facility will be operated by former CCA staff who have become state employees after an abbreviated

six-week training course.

"Upon completion of their training, they will have the same knowledge and skills as all newly hired CDCR correctional officers," said CDCR spokeswoman Deborah Hoffman.

The hiring arrangement was acceptable to the state's powerful prison guards' union, the California Correctional Peace Officers Association (CCPOA), because the former CCA employees will join the union, which has been losing members in recent years. The CDCR has also contracted with private prison firm GEO Group to house prisoners in-state, including at the company's McFarland Female Community Reentry Facility, Central Valley MCCF, Golden State MCCF and Desert View MCCF.

The extra bed space is needed because the state's prison population continues to grow, stated Prison Law Office director Don Specter.

"It's continuing to increase, so any building would be spending billions of dollars for only a temporary fix," he said. "It also shows that realignment was only a temporary fix, as well."

Additionally, the CDCR currently

houses around 8,500 prisoners in out-of-state CCA-operated facilities in Arizona, Oklahoma and Mississippi. It was the governor's threat to move up to 4,000 more prisoners to private prisons in other states that contributed to the federal court overseeing the *Plata* litigation to give the CDCR two more years to meet the court-ordered prison population reduction.

"You really can't build your way out of the problem," Specter observed.

Meanwhile, counties are seeking to expand their jails to accommodate the influx of prisoners under Realignment. Since 2012, state officials have given \$1.2 billion to California counties for jail construction plus \$500 million to renovate or expand existing facilities, which is expected to add almost 15,000 new jail beds statewide. The Realignment initiative provides funding to counties through vehicle license fees and a portion of the state's sales tax.

"People commit crimes in the local community and they are now, to a greater degree, being supervised, being rehabilitated or being incarcerated locally. We're transferring billions of dollars to achieve that goal," Governor Brown stated. "We want

**ColdCrib**  
#1 JAILHOUSE CATALOG  
**ISSUE#3 OUT NOW!**  
3 FREE Non-Nude PHOTOS INCLUDED!  
WITH PURCHASE  
INMATES MUST SEND \$10  
TO GET YOUR OWN MULTI-PAGE  
CATALOG/MAGAZINE TO ORDER  
HUNDREDS OF LOVELY LADIES PHOTOS  
& OTHER SERVICES FOR THE INCARCERATED

THE TRUTH ABOUT SAVING ON JAIL CALLS  
LEARN HOW TO GET FEMALE COMPANIES ON THE OUTSIDE  
"CORRECTIONAL FACILITY FRIENDLY"

**GET MAIL FROM FEMALE PENPALS**  
GET LISTED ON OUR PENPAL SITE  
[www.COLDCRIB.com](http://www.COLDCRIB.com)  
Send your photo and info along  
with \$30 for 1 FULL year membership  
OR \$30 for Pen-Pal List of up to 50 addresses  
of our registered female PenPals

**ColdCrib communications**  
INMATES CALL CELL PHONES  
**\$17/mo Unlimited Calls**  
+ \$15 ONE TIME Activation Fee  
Federal, State, County & Local Facility Inmates  
Local Number Provided Same Day!

**NOW INMATES CAN ORDER THEIR OWN NUMBERS!**  
MAKE EVERY CALL HOME A LOCAL CALL  
NO MORE RUNNING OUT OF MINUTES!  
SEND \$3 FOR PHONE PLAN APPLICATION FORM  
OR HAVE YOUR LOVED ONES ORDER ONLINE  
[www.ColdCribCommunications.com](http://www.ColdCribCommunications.com)

**SPECIAL OFFER**  
BEST 4X6  
PHOTOS  
VARIOUS BACKSHOTS & POSITIONS  
**SET OF 15 (NON-NUDE) SEXY PHOTOS**  
ONLY \$16  
MUST ADD \$2 S/H FOR ALL ORDERS  
INMATES MUST SEND FACILITY CHECK OR MONEY ORDERS  
**COLD CRIB**  
PO BOX 682407  
FRANKLIN TN 37069

**Help From Outside, For Humanity Inside.**  
*Offering basic services on the outside.*

FINANCE & BUSINESS  
SOCIAL NETWORKING  
PARALEGAL  
ADMINISTRATIVE  
INFORMATION  
PHONE  
CREATIVE

**HFO**  
HELP FROM OUTSIDE

Help From Outside understands what you're going through. We can help you accomplish the things you need to get done but can't.

We offer:  
- High standards & ethics  
- Timely & professional services  
- Personal touch

"HFO has excellent business etiquette and ethics."  
- T. Brown  
"I like that you sent a personal letter. HFO is more personable than your competitors."  
- A. Mitchell

**WE'VE MOVED! PLEASE CONTACT US AT OUR NEW ADDRESS:**  
For a brochure and application please send a SASE to:  
Help From Outside | 2620 Bellevue Way NE #200 | Bellevue, WA 98004  
206.486.6042 | [www.helpfromoutside.com](http://www.helpfromoutside.com)



## Consequences in California (cont.)

the community that spawns the crime to handle the crime.”

A November 2013 Realignment Report Card by Californians United for a Responsible Budget (CURB) examined the Realignment plans of 13 “key” counties, with respect to “the balance between community-based programs that reduce imprisonment and plans to expand jail capacity or build new jail beds.”

The CURB report noted that “Shifting people from State prison to County jail is not a solution to our prison and budget crises. Realignment can most safely and effectively be implemented by using alternative sentencing and community-based services instead of expanding imprisonment and policing, both of which [are] socially and economically costly.”

However, only two of the 13 states examined in the report received a passing grade: Alameda and Santa Clara, which “have focused their resources on innovative strategies to reduce their jail population and providing programming and alternatives

to incarceration.” All of the other counties intend to expand their jail capacity, including five – Kern, Riverside, San Mateo, Los Angeles and San Bernardino – that each plan to build two new jail facilities.

Those plans are not always successful, though. In December 2013, requests by Riverside and San Bernardino counties for \$80 million in grants for new jail construction were denied by state officials. Riverside County already has almost 4,000 jail beds and is in the process of adding a 1,250-bed, \$267 million expansion at one of its facilities, while San Bernardino County has around 6,000 jail beds.

On May 6, 2014, the Los Angeles County Board of Supervisors voted to proceed with plans to demolish the Men’s Central Jail and renovate a facility for female detainees at a cost of approximately \$1.8 billion. The Men’s Central Jail currently holds around 19,000 prisoners; it will be replaced with a treatment facility for offenders with substance abuse and mental health problems. The Board authorized initial architectural plans for the new jail and an environmental impact report.

The \$1.8 billion proposal to replace the Men’s Central Jail was the least costly of five plans submitted by a consultant hired by the county, Vanir Construction Management.

Still, according to Board Supervisor Zev Yaroslavy, replacing the jail is the “most expensive infrastructure project in the history of the county, without a doubt, not even close.” He objected to the proposal, stating, “I don’t believe there was a serious effort made at considering alternatives” to building a new detention facility.

The ACLU lambasted the proposal because replacing the jail would leave bed space capacity unchanged – though overcrowding

would be decreased while access to care for the mentally ill and prisoners with drug or alcohol addictions would increase. Esther Lim of the ACLU criticized the Board of Supervisors for hiring Vanir, which specializes in construction projects, including jail construction, as a consultant.

“It was not surprising that a construction company in its report proposed five options, all involving construction of new buildings,” she said.

### Early Releases Criticized

TECHNICALLY, PRISONERS ARE NOT RELEASED early under Realignment; rather, those that are eligible serve their sentences in county jails rather than state prisons. Governor Brown emphasized that no prisoners would be released early, and the CDCR states on its website there will be no early releases for state prisoners.

While it may be correct that offenders are not released early from state prisons, that isn’t true when it comes to former prisoners who violate the terms of their supervised release and are subsequently jailed.

As part of Realignment, most prisoners are no longer released on parole under state supervision but instead are placed on community supervision under county probation officials. When they violate their supervision they can be sent to jail for up to six months. However, due to overcrowding caused by Realignment, community supervision violators typically serve only a small amount of their jail sanction – sometimes just a few days.

According to a survey of county jails by the Board of State and Community Corrections, releases due to lack of bed space increased by 21% over the first nine months of Realignment. The most recent quarterly

## TYPING SERVICES

Provided since 1998

Specifically designed, with special rates for the incarcerated person.

Black / Color Printing and Copying

SEND A SASE FOR A “FREE” PRICE LIST AND MORE INFORMATION TO:

LET MY FINGERS DO YOUR TYPING

Sandra Z. Thomas (dba)

P O Box 4178

Winter Park, Florida 32793-4178

Phone: 407-579-5563

Special Offer: \$2.00 off first order.

Special offer void after: 12/31/2014

<p><b>INMATE SHOPPER</b> 2014 READERS CHOICE RESULTS</p> <p>OVER 1000 PRISONER RESOURCES NEW! 2013 WINNER 100 LGBT RESOURCES 100 BEST SELLERS 100 BEST RESOURCES 100 BEST RESOURCES 100 BEST RESOURCES</p> <p><b>FREE ADS</b></p> <p>AMERICAN PRISONERS' UNION &amp; UP TO 10% OFF ON ALL INMATE SERVICES</p>	<p>100 Non Nude Girls 50 Pen Pal Resources 80 Gift Shops 63 Catalogs to Order 34 Sexy Photo Sellers 14 Typist 22 Personal Assistants 15 Magazine Sellers 5 Publishing Services 60 Contest for Writers &amp; Artists</p> <p>Now You May Order The New <b>Censored Edition</b> Without Pen Pal Content &amp; No Sexy Girls - No More Rejections</p>	<p><b>INMATE SHOPPER</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> Send Me the CURRENT ISSUE Inmate Shopper: \$17.99 + \$7.00 Priority Shipping</li><li><input type="checkbox"/> Send Me the NEXT ISSUE Inmate Shopper: <input type="checkbox"/> March <input type="checkbox"/> July <input type="checkbox"/> Nov/Holiday</li><li><input type="checkbox"/> Send Me the CENSORED ISSUE Inmate Shopper</li><li><input type="checkbox"/> Send Me THE BEST 500 NON PROFIT ORGS: \$14.98 + \$4.00 Shipping w/tracking</li></ul> <p><b>Freebird Publishers</b> Box 541, North Dighton, MA 02764 <a href="http://www.FreebirdPublishers.com">www.FreebirdPublishers.com</a></p>	<p>Legal: Innocence Legal Family Law Legal Children's Legal Research Civil Rights Health &amp; Health Care Sentencing Issues Veterans Issues Voting Right Women's Issues Release &amp; Re-entry Jailhouse Lawyers Newsletters-Books Free Services &amp; Products &amp; much more</p>	<p><b>THE BEST 500</b> NON-PROFIT ORGANIZATIONS FOR PRISONERS And Their Families</p> <p>America's Only Up to Date Publication on Non-Profit Orgs for Prisoners</p> <p><b>FIND WHAT YOU NEED FAST</b></p> <p>WITH OUR EXCLUSIVE CROSS-REFERENCED INDEX</p> <p>Legal Services Medical Education Food Housing Financial Mental</p> <p>Religious &amp; Spirituality Social &amp; Family The Arts The Law The Prison The Prisoner The Prisoner's Family The Prisoner's Community</p> <p><b>\$14.98</b></p> <p>THE BEST 500 FOR PRISONERS IN SPANISH \$14.98</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

jail survey, from July to September 2013, reported 6,189 early releases statewide.

In February 2013, Assembly members Ken Cooley and Susan Eggman introduced a bill, AB 601, that would have required offenders who violate their community supervision to be sent to prison for up to a year. The legislation failed to pass, in part because it would have led to an increase in the number of state prisoners at a time when California is trying to further reduce its prison population to comply with the court order in the *Plata* litigation.

"Any attempts to change Realignment that would send more offenders to state prison must be reconciled with the federal court order to reduce prison crowding," stated CDCR spokesperson Jeffrey Callison.

High-profile crimes committed by some released prisoners have led to public outrage. For example, in June 2013, a few months after Dustin James Kinnear, 26, was released from prison and placed on community supervision under the Realignment initiative, he stabbed to death a 23-year-old woman on the Hollywood Walk of Fame because she refused to give him a dollar. Critics argued that Kinnear, who has mental health problems, would have been incarcerated at the time were it not for Realignment.

Previously, on December 2, 2012, former prisoner Ka Pasasouk, who was on community supervision under Realignment, shot and killed four people in Los Angeles.

Prosecutors are seeking the death penalty while relatives of the victims have filed suit against the Los Angeles County District Attorney's Office and Probation Department, claiming county officials had failed to properly supervise Pasasouk after he was released from prison.

"This is an experiment with people's lives," stated Michael Rushford, president of the Criminal Justice Legal Foundation, referring to Realignment.

### Recent Developments

THE ASSOCIATED PRESS REPORTED IN March 2014 that some counties were undermining the Realignment initiative by increasing the number of offenders sent to state prisons due to charging decisions by local prosecutors. In fiscal year 2013-2014, 5,500 prisoners charged with and convicted of second felonies were sent to the state prison system – a 33% increase compared with the previous fiscal year.

"We're not quite sure what's behind the trend," said Aaron Edwards, with California's Legislative Analyst's Office. "When you see such a drastic increase year-over-year ... that kind of suggests that there's been some kind of behavior change at the county level, in terms of how they are charging, whether they are choosing to charge individuals as second-strikers or not."

Apparently, local prosecutors are exercising their discretion to file more serious charges against defendants, such

as felonies rather than misdemeanors, in order to secure convictions that will send them to prison rather than jail under Realignment – thereby reducing the burden on county jails.

The California District Attorneys Association denied that prosecutors had altered their charging practices, but San Joaquin Public Defender Peter Fox contended there has been "some attitudinal backlash against realignment" by district attorneys and judges.

As of April 30, 2014, California's prison population was around 134,800 – 2,243 more than a year earlier. This poses a problem in terms of meeting the federal court-ordered prison population cap by February 2016.

Counties continue to seek additional money from the state for their own increasing jail populations, including funds for jail construction and expansion as well as for rehabilitative and treatment programs.

Stanislaus County Sheriff Adam Christianson noted that "if you want to see success in realignment, then the counties and local governments need help with the resources to do that."

Lobbyists representing Los Angeles County have asked state officials for assistance in funding the county's \$1.8 billion overhaul of its jail system.

"We have received approximately thirty percent of the realigned population – 6,000 county jail inmates that have been sen-

## Corcoran Sun

Full Color Prison Yard Monthly  
News ♦ Entertainment ♦ Resources

**3 Month Special Subscription**

**\$5 or 20 FCS Stamps**



### COLOR NEW 18 PAGES

Expanded full color format with exciting episodes of thrilling novels and sexy pics. Many how-to articles on writing, art and health. Filled with entertainment: puzzles, trivia, jokes, poetry... Submit your writing, art, poetry etc. See your submission, name and contact info in print.

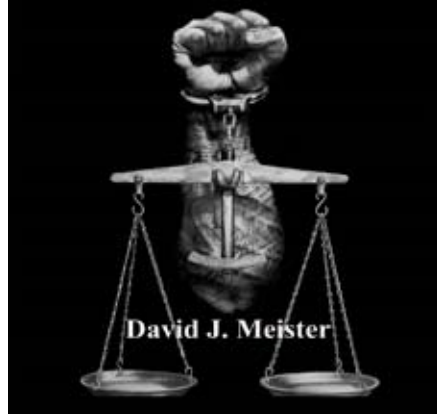
**Special 6-Issue Subscription (\$10 or 40 FCS stamps)**

**Special Year Subscription (\$20 or 80 FCS stamps)**

Payments to: Freebird Publishers  
Box 541- Dept. BK, North Dighton, MA 02764  
[www.FreebirdPublishers.com](http://www.FreebirdPublishers.com)  
[Diane@FreebirdPublishers.com](mailto:Diane@FreebirdPublishers.com)

## BATTLING THE ADMINISTRATION

An Inmate's Guide to a Successful Lawsuit



David J. Meister

Written from a prisoner's perspective, this book is excellent for both the first-time litigant and the old hand, a practical guide for navigating the strange world of prisoner's rights.

- ⇒ Guidance on how to get organized
- ⇒ Tips for investigating and building a case
- ⇒ Spelling and Grammar refresher
- ⇒ Detailed overview of the legal system
- ⇒ Sample complaint and other forms
- ⇒ Covers court rules, evidence, and exhibits
- ⇒ Details on hearing and trial practice
- ⇒ Comprehensive summary of prisoner's rights
- ⇒ Hundreds of citations to controlling case law

### Battling The Administration

by, David J. Meister

ISBN: 9781940638034 555 pages

Send check or money order to:

**Wynword Press**

P.O. Box 557

Bonnors Ferry, ID 83805

Include your full Name, DOC#, Institution name and your complete address.

Order online at: [www.wynwordpress.com](http://www.wynwordpress.com)

**Tel(208)267-0817**

**\$34.95**

**Price includes shipping**

## Consequences in California (cont.)

tenced under realignment,” stated lobbyist Alan Fernandes. “But we’ve received about five percent of the available funding for jail construction.”

Some lawmakers, however, have criticized the practice of pouring more money into building more jails. For example, state Senator Loni Hancock observed that the solution to California’s prison overcrowding problem is not to “replicate our prison system county jail-by-county jail.”

In May 2014, a state Senate budget subcommittee opposed a proposal to grant an additional \$500 million to counties for jail construction and expansion, instead voting to provide such funds for construction projects and programs “designed to provide rehabilitative services and housing for individuals convicted of crimes.” This would potentially include treatment programs, transitional housing, and substance abuse and mental health care facilities.

“[The] vote was a small but important step in using realignment as an opportunity to find and fund real alternatives to the current disaster of mass incarceration,” said Diana Zuñiga, with Californians United for a Responsible Budget.

Meanwhile, counties will likely continue to face lawsuits and other difficulties as they grapple with the fallout of the state’s Realignment initiative and attempt to cope with their overcrowded jails – which they will have to bring into compliance with standards for holding long-term prisoners that such facilities were never designed to accommodate. Realignment and its attendant impact on local jails further corroborate the notion that correctional

overcrowding is a consequence – not a cause – of California’s ongoing practice of using incarceration as a catchall solution for complex socio-economic, political and cultural challenges facing the state and its citizens. ■

Sources: *www.chicoer.com*, *www.ksee24.com*, *Sacramento Bee*, CBS, U.S. Bureau of Justice Statistics, *Willits News*, *The Crime Report*,

*CorrectionsOne*, *www.cdcr.ca.gov*, *www.pe.com*, *www.tehachapinews.com*, *www.sanluisobispo.com*, *www.calsheriffs.org*, *www.kpbs.org*, *www.montereyherald.com*, *www.dailybreeze.com*, *www.correctionalnews.com*, *www.scpr.org*, *www.curbprisonspending.org*, *Los Angeles Times*, *Associated Press*, *Mercury News*, *www.mintpressnews.com*, *www.presselegram.com*, *www.pasadenastarnews.com*

## Ninth Circuit Revives Prison Trust Account Seizure Claim; Disputed Ownership Requires Due Process Protections

IN AN UNPUBLISHED RULING, THE NINTH Circuit Court of Appeals reversed a federal district court’s sua sponte dismissal of a California prisoner’s claims that prison officials improperly removed money from his trust account without adequate due process protections.

California state prisoner Anthony Brazier filed a federal civil rights complaint pursuant to 42 U.S.C. § 1983, alleging that prison officials deprived him of due process when they seized erroneously-issued tax refund checks from his prison trust account. The district court dismissed the complaint sua sponte on initial screening under 28 U.S.C. § 1915A.

On de novo review, the Ninth Circuit held that dismissal without leave to amend was improper. Citing *Sanders v. City of San Diego*, 93 F.3d 1423 (9th Cir. 1996), the Court of Appeals explained that “the procedural protections of the Fourteenth Amendment apply to protect a significant property interest even if there is a dispute over ownership.”

As such, the Court remanded the case

“for the sole purpose of allowing Brazier to amend his due process claim ... to allege that Brazier did, in fact, have an ownership interest in the tax refunds credited to his inmate trust account.” However, in the absence of such an allegation, “Brazier’s claim must fail.”

The appellate court upheld the dismissal of claims against the California Department of Corrections and Rehabilitation as barred by the Eleventh Amendment. It also affirmed the dismissal of individual capacity claims which did not allege personal involvement of individual prison officials. See: *Brazier v. California Department of Correction & Rehabilitation*, 523 Fed. Appx. 477 (9th Cir. 2013).

Following remand, on August 7, 2013, Brazier moved to withdraw his consent to proceed before a magistrate judge; his motion was denied in a tersely-worded order, with the court noting that he had “not shown good cause to withdraw his consent.” The case remains pending with Brazier filing a motion for summary judgment in March 2014. ■



### FULTON & WELCH

TEXAS PAROLE  
ATTORNEYS

- o AFFORDABLE
- o PERSONALIZED PACKET
- o 2 HEARINGS
- o MEET WITH YOU & FAMILY

“LET US GET YOU HOME SOONER”

10701 Corporate Dr., Ste. 390,  
Stafford, Texas 77477

## Alexander Byrd Optics

### Single Vision Eyeglasses Special

**\$36.99** plus S&H

Upgrade to photochromic/  
Transitions by adding \$69.99

All eyeglasses include free UV and Anti-scratch coatings (a \$29.95 value)

Bi-Focals for \$54.99 plus S&H a pair and new  
Two year anything happens warranty for \$25.00

Alexander Byrd Optics  
Po Box #1063  
Richland, WA 99352

To receive order form and details write:

Contact us on CorLinks at: [abyrdoptics@gmail.com](mailto:abyrdoptics@gmail.com)  
[www.abyrdoptics.com](http://www.abyrdoptics.com)







## State of Washington Prison Phone Justice Campaign

***Prison Phone Justice Project needs your help for statewide campaign!***

While much progress has been made in reducing the costs of long distance prison calls, we are still fighting to reduce the high costs of in-state prison and jail calls at the local level. In January 2014, the Human Rights Defense Center (HRDC), the parent organization of Prison Legal News, reopened its Seattle office to launch the Washington Prison Phone Justice Campaign.

This is our first statewide phone justice campaign, and we're excited to have people involved on both the local and national levels who are dedicated to ending the exorbitant phone rates and kickbacks associated with the prison phone industry. We have already been obtaining the phone rates and contracts for all 39 county jails in Washington, as well as data from the Washington Department of Corrections.

We hired a local campaign director, Carrie Wilkinson, who manages our office in Seattle and is coordinating the statewide campaign. Washington prisoners and their families pay some of the highest phone rates in the nation, and we need your help to win this battle!

Here's how you can help – first, please visit the campaign website:

**[www.wappj.org](http://www.wappj.org)**

There you can see all the ways you can make a difference. The site allows you to sign up for the campaign and upload videos and share blog entries about how high prison phone rates make it difficult for you to stay in touch with your incarcerated loved ones. You can even call in your story to **1-877-410-4863**, toll-free, at any time! We need to hear how you and your family have been affected by high prison and jail phone rates. If you don't have Internet access, you can mail us a letter describing your experiences. Send letters to HRDC's main office at: **HRDC, Attn: WA Phone Justice Campaign, P.O. Box 1151, Lake Worth, FL 33460**. Washington state prisoners can send a copy of this notice to their family members so they can get involved.

By choosing to participate in the Washington Prison Phone Justice Campaign, you will be playing a key role in ending the unfair phone rates that prisoners' families have to pay. We cannot win this battle without your help, so please visit the campaign website and share your experiences! Donations are also welcome and greatly appreciated, and can be mailed to the above address or made online via the campaign website. Thank you for your support!



## From the Editor

by Paul Wright

**W**HEN *PRISON LEGAL NEWS* FIRST started publishing in 1990, the Internet only existed for the military and a few academic institutions. PLN made its first online appearance in 1998 on what was a fairly simple website by today's standards. We have gone through several site designs and changes since then, and I am pleased to announce that on May 15, 2014 we launched three new and updated websites for [www.prisonlegalnews.org](http://www.prisonlegalnews.org), [www.humanrightsdefensecenter.org](http://www.humanrightsdefensecenter.org) and [www.prisonphonejustice.org](http://www.prisonphonejustice.org).

Our new sites, especially the PLN and Prison Phone Justice websites, are much more user friendly and utilize state-of-the-

art search engine technology to make our tens of thousands of articles, court rulings, publications, back issues of PLN and other content quick and easy to find. No other website has more prison- and jail-related news and information than PLN's site, and our Prison Phone Justice site is the only one that tracks prison and jail phone contracts, rates, commission kickbacks and related data.

Best of all, most of the information on our sites is free. On PLN's website nearly all of our content, including PLN back issues, are available at no cost. The only content we charge to access is verdict and settlement information and our brief bank with almost 7,000 complaints, briefs, motions, judgments, administrative rulings, depositions, expert reports and more.

If you have Internet access, please check out our new websites; if not, let those who do know about them. PLN also maintains a social media presence on Facebook and Twitter, with around 900 likes and 2,500 followers, respectively. Further, PLN provides a free news email list. Each weekday we send out an email digest with 6-10 news stories related to prisons and jails; you can sign up on the PLN website under "subscribe." When we switched over to the new email list service we were not able to import our old subscribers, so if you were on PLN's email list previously and stopped receiving our messages, please sign up again.


In addition to being easier to use and having vastly improved search capabilities, our new websites still allow for PLN

subscription purchases and renewals, book orders and donations. The Human Rights Defense Center's site contains information about HRDC's board of directors, staff, annual reports, news coverage and much more.

We always welcome suggestions and feedback on how we can make things better. We also welcome contributions to our websites – particularly verdicts and settlements where people have won cases against corrections and law enforcement agencies, and contributions to our brief bank in the form of winning briefs, motions, expert depositions, discovery requests, etc. For our publications library, we are especially interested in obtaining and posting private prison contracts and similar documents.

Our cover story this month on Realignment in California focuses attention on the dismal state of California jails, and how the absence of meaningful sentencing reform continues to be a problem as the legislative and executive branches lack the courage and political will to shorten sentences to reduce the state's prison population to constitutional levels. As more prisoners are held in California jails for longer periods of time, we are already seeing horrific jails getting even worse in terms of being unable or unwilling to provide adequate medical and mental health care. As a result, the problems resulting from overcrowding and overincarceration in California are simply being shifted and postponed, not resolved.

Enjoy this issue of PLN; please encourage others to subscribe and to check out our new and updated websites. 🐼




**PASS**  
Prisoner Assistance  
Scholastic Service  
provides educational  
materials nationally to  
prisoners in state and  
federal prisons and jails.

- ◆ Victim Awareness
- ◆ Anger Management
- ◆ Addiction/Substance Abuse
- ◆ Domestic Violence
- ◆ Gang Diversion
- ◆ Conflict Resolution
- ◆ Parenting
- ◆ Non-violent Communication
- ◆ Re-entry in Society
- ◆ Living With Purpose

Prisoners who successfully complete the PASS program earn a degree in Personal Psychological Development which can be used as evidence of rehabilitation before parole boards and with prison officials.

**10 COURSES**  
**2 SEMESTERS**



\$500 for the entire course of study and degree.

Graded study - completed through the mail.

**1-888-670-7277**

**FOR MORE INFO**  
[www.passprogram.org](http://www.passprogram.org)  
[pass@passprogram.org](mailto:pass@passprogram.org)

PASS Program, PO BOX 2009, San Francisco, CA, 94126

Introducing **THE BUZZ REPORT!** Subscribe today, and get all of your sports scores and lines delivered conveniently to your email inbox, every day! Add **info@sportzzbuzz.com** to your Corrlinks email subscription list for info. on how to get The Buzz!

## Florida Prisoner Awarded \$1.2 Million for Burn Injuries

A FLORIDA JURY HAS AWARDED A PRISONER \$1.2 million in a negligence suit against the GEO Group, the nation's second-largest for-profit prison company, following a trial that was delayed more than a year after a juror said he was afraid to reach a verdict.

The case stemmed from an August 28, 2007 argument between prisoners Roy D. Hyatt and Rodney Smith in the dayroom of their unit at the South Bay Correctional Facility. Following the spat, Smith used a microwave to boil a container of water. He then returned to the dayroom and threw the water on Hyatt, who sustained first- and second-degree burns to approximately 30% of his body and lost the use of one eye.

Hyatt sued GEO in state court, alleging the company was aware of other incidents in which prisoners had used microwaves to boil water to assault other prisoners.

Hyatt's complaint, filed by attorney Philip G. Thompson, claimed that GEO had breached its duty of care by allowing prisoners unrestricted "access to microwaves to boil water which could be used as a weapon against other inmates." The suit also alleged that it was reasonably foreseeable that the incident involving Hyatt and Smith could occur, since GEO did not remove or restrict prisoners' access to microwaves.

On May 10, 2011, shortly before the trial in the case was to begin, a juror told

Palm Beach County Circuit Judge Glenn Kelley that he feared for his safety if he returned a verdict against Hyatt.

"I'm worried about reprisals against my family," the juror said. At the time, Hyatt was serving 17 years for aggravated battery with a deadly weapon and was not due to be released for another three years, but the juror stated he was afraid Hyatt's friends might hunt him down.

"This is a unique one for me," said Kelley. "I've never had a juror in the civil division express concerns about his safety."

Thompson argued that the juror's concerns were baseless. If people could get out of jury duty by claiming they were scared, he said, then havoc would reign in the justice system.

"I agree with you," Kelley replied. "If we excuse jurors based on fear of retaliation, we'd never have any criminal trials."

But when the juror said he couldn't be impartial, Judge Kelley stated he had no choice but to declare a mistrial because no

alternate jurors were selected and the jury did not have enough members left to hear the case.

After the trial was rescheduled and held 16 months later, the jury found GEO Group liable for Hyatt's injuries. The panel awarded Hyatt \$1,228,242, including \$78,242 for future medical expenses, \$150,000 for lost earning ability in the future, and \$1 million for past and future "pain and suffering, disability or physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a disease or physical defect, or loss of capacity for the enjoyment of life." Hyatt had offered to settle before trial for \$125,000.

GEO filed a motion for a new trial, but the parties subsequently agreed to a settlement and stipulated to dismiss the case. See: *Hyatt v. The GEO Group*, Fifteenth Judicial Circuit Court (FL), Case No. 50-2009-CA-018316. ■

Additional source: *Palm Beach Post*

**inmateMAGS**.com  
formerly MyMagstore.com

Buy 1200 **SINGLE** Copies of Magazines • 1200 **Subscriptions** • **VIP Service**  
**1800 Newspapers** • Payment with **Stamps** • **Prepaid Accounts**  
Send \$3 or 10 Stamps for **50+ Page Full Catalog** (\$3 Discount Coupon Included)

**InmateMAGS.com**  
4208 University Way NE  
Seattle, WA 98105

**www.inmateMAGS.com**  
Info@inmateMAGS.com  
206-322-6397



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription!  
Quarterly drawing **WINS \$100!** (Void in New York)  
(Last Quarter's winner from **Somers, CT.**)  
**TELL YOUR FRIENDS! ACT NOW!!**



**PO Box 2063 • Fort Walton Beach FL 32549**  
**www.InmateMagazineService.com**

# Inmate Magazine Service

# Are We Really Witnessing the End of Mass Incarceration?

by James Kilgore

*"This is the beginning of the end of mass incarceration."—Natasha Frost, associate dean of Northeastern University's school of criminology and criminal justice*

AFTER MORE THAN THREE DECADES OF "tough on crime," the New Jim Crow, truth in sentencing and three strikes, the law-and-order ship looks adrift with no one rushing to bring it back on course. The bubble of prison construction is about to burst, if it hasn't already. Pretty soon it may be difficult to find anyone who admits they once advocated serial prison building and trying fourteen-year-olds as adults. Crime figures are down while other distress meters rise into the danger zone – unemployment, homelessness and deteriorating public education. No longer can Directors of Corrections masquerade as first responders and lay claim to unlimited funding streams. Budgetary and social justice alarm bells are ringing loud and clear.

On top of this, as Soros Justice Fellow Tracy Huling notes, a "newfound political will" from state governors of both parties "to close prisons and, in some cases, to reduce the overall size of their incarceration systems" has emerged. At a local level, more than 40 municipalities and counties, from Kalamazoo to Jacksonville, have passed Ban the Box legislation which removes questions about criminal background from job applications. Even people

with felony convictions seem to be getting a fair shake.

For those of us who have spent years of our lives in cages and for everyone who has been fighting mass incarceration, this reality is encouraging but also a little unsettling. We have perfected our mantras, honed our talking points of condemnation for everything from supermaxes to technical parole violations. Now everyone speaks like they are on our side. In a battle where the lines were once clearly drawn, the division between them and us is getting murky. After six-and-a-half years inside federal and state prisons, I'm getting pressure to call prison guards "correctional officers," being told I must find commonality with them as "exploited workers." Such urgings push me into an uncomfortable corner. Time to take a deep breath and survey the lay of the land.

## The Carceral Big Picture

CAPTURING THE BIG PICTURE REQUIRES looking at several aspects of what some of us call the prison industrial complex. The first is the numbers game: do we really have less people behind bars? The answer is yes. For the past three years, the total number of people in prisons in the U.S. has fallen for the first time since 1972, a post-2009 decrease of about 43,000 out of a prison population of more than 1.5 million (2.2 million including jails). No massive celebra-

tions are in order, however. Some disturbing new trends are creeping into the mix – like the meteoric increase in the incarceration of women in the last few years. Besides, even with the reductions, the U.S. still far outdistances the rest of the world in per capita incarceration rates and states like Pennsylvania continue to promote massive prison construction projects.

Also, the numbers game isn't everything. We need to ask what happens to people who have been taken out of prison. Do they find jobs? Are substance abuse and mental health treatment programs available? Are they managing to avoid constant harassment by police? Do they really have a future or are they destined to live at the margins, in the gutters, alleys and board-ups of U.S. cities? And most importantly, how many of them are locked up somewhere else just to keep the state prison statistics looking good?

Answering these questions is difficult. That trending catchall, "alternatives to incarceration," can become a shell game where punitive policies submerge themselves in benevolent clouds of risk assessment tools and evidence-based practices. Punishment adopts many pseudonyms.

A quick snapshot of the nation's four largest prison systems sheds considerable light on the complex dynamics involved.

## New York

LET'S BEGIN WITH THE GOOD NEWS, New York, where the most significant changes have occurred. Since 1999 the prison population in New York State has decreased by 24%, with eleven prisons closed. Law enforcement officials have been quick to attribute these shifts to reduced crime produced by "hot spot" policing and "zero tolerance."

Activists Judith Greene and Marc Mauer call the decreases the result of "a remarkable change in drug enforcement policy in 1999 that entailed an unprecedented curtailing of NYPD's 'war on drugs.'" These policy changes didn't come about through a spontaneous change of heart by police, nor did legislators simply wake up to budgetary pressures. Rather, the work of advocacy groups like the NYCLU, the Correctional Association's "Drop the

**HOT DREAMS**  
GET YOUR NEW NON NUDE CAT #31 AND FREE PHOTO U MUST SEND A S.A.S.E ALONG WITH 5 STAMPS OR \$2.00 HUNDREDS TO CHOOSE IN BIKINI AND PANTIES  
GET THE NON-NUDE SUPER CATALOG PACKAGE#1 THAT HAS OVER 2000 HOT BABES IN PANTIES, LINGERIE, THONGS, YOU FAVORITE TYPES OF SHOTS ONLY \$15.00 FREE S/H  
TO RECEIVE A 30 PIC SET OF CAMELTOE SHOTS AND COEDS OF ALL SEXY HOT WHITE BABES SEND ONLY \$20.00 ALONG WITH 4 STAMPS! THEY ARE HOT! IN PANTIES BRA AN THONGS AN GSTRINGS  
GOT STAMPS? SEND 50 STAMPS TO GET 10 NON NUDE HOT PICS. SEND \$27.00 TO GET NON NUDE CATALOGS 2-11 SEND \$15.00 TO GET CATALOGS 2-7 AND SAME PRICE IF U ONLY CATALOGS 7-11 COMES WITH THE SET CATALOG. SEND 5 STAMPS OR \$2.00 TO GET NON NUDE CAT#30. SEND ONLY \$15 TO GET THE ALL NUDE BIG PACK CATALOG#1  
PLEASE MAKE ALL PAYMENTS TO : **HOT DREAMS**  
P.O.BOX 652 DEPT PN/ RACELAND, LA 70394  
DON'T REMOVE THIS AD!!



Rock” campaign and the Drug Policy Alliance’s Real Reform coalition exposed the bankruptcy of aggressive drug prosecutions. Eventually the public and then key officials like District Attorney Joe Hynes began to see the light.

Reforms such as the removal of mandatory minimum sentences contributed to a decline in drug arrests, from 40,361 in 2008 to 29,960 in 2012. Moreover, while the NYPD’s stop-and-frisk policy has deservedly landed New York City with a New Jim Crow label, figures from the state Division of Criminal Justice Services show that drug arrests of black defendants have actually been decreasing – from 42% of the total in 2008 to 35% in 2012. More people now receive citations for minor possession. In other cases, instead of offering penitentiary time, authorities channel thousands through treatment-based diversions like drug courts. Relaxing conditions of parole is also part of the new approach, precipitating a huge reduction in returns to prison for petty transgressions like missing a meeting with a parole officer or failing to look for work.

Still, even with all these changes, New York State’s per capita incarceration rate remains at 425 per 100,000, well below the national average of 728 but about four times that of the United Kingdom and five times the rate in Sweden. Though New York has made great strides, forgiveness and mercy have not yet been thoroughly etched into the

logo of the New York State Department of Corrections and Community Supervision.

## California

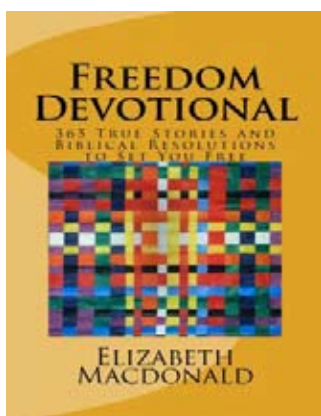
CALIFORNIA PRESENTS ANOTHER VERSION of the reform scenario: a set of administrative changes forced down the throat of the governor by a federal court decision. Despite its reputation as a blue state, California has been at the cutting edge of racialized mass incarceration. As recently as 2007, the state assembly voted 70-1 to pass AB 900, authorizing the construction of 53,000 new prison and jail beds. But a high-profile campaign by Californians United for a Responsible Budget (CURB), a coalition of over 50 organizations and an advocacy heir of prison abolition pioneer Critical Resistance, slowed the state’s capacity to roll out the construction.

Then, in 2009, the federal courts intervened. In a landmark move resulting from legal action by prison resident Marciano Plata, the court upheld allegations that medical care in California’s prisons was inadequate. The decision pointed to overcrowding rather than lack of services as the root problem. The court then ordered the California Department of Corrections and Rehabilitation (CDCR) to slash the prison population from its then 200% of capacity to 137.5% within two years. Failure to comply would mean the feds would step in and run the system.

In response, Jerry Brown, first as state Attorney General and then as governor,

bought time with legal appeals while he developed his plan of “realignment.” Vowing not to release people early, the governor “realigned” individuals from the state prison system by shifting them into county jails and community-based programs. AB 109, passed in 2011, was the enabling legislation that removed the cap on county jail sentences and cleared the deck for people to serve unlimited time in county lockups as long as they were “non/non/nons” – convicted of non-serious, non-violent and non-sexual crimes. Despite disturbing results like one man being sentenced to 43 years in the Los Angeles County Jail, Stanford law professor Joan Petersilia responded with typical Golden State hyperbole: “The importance of California’s realignment experiment cannot be overstated.... This is the biggest penal experiment in modern history.”

This mega- “penal experiment” came with a local sweetener: extra funds for counties to accommodate the “realigned.” Some sheriffs opportunistically used this money for jail construction rather than placing people in alternative programs. A few prosecutors developed their own pushback strategy, “upping” defendants’ charges to



**NEW!!!**

365 inspirational true stories written in prison for prisoners.

**Freedom Devotional**  
by Elizabeth Macdonald, PhD

Available at amazon.com and major book distributors. [www.macdonaldbooks.biz](http://www.macdonaldbooks.biz)



**INMATE**  
CONNECTIONS.com

92% Response Rate in 2013!  
50,000 Hits Daily!

A+ Rating with the Better Business Bureau!  
Facility and personal checks, credit cards, stamps,  
& Moneygram payments accepted!

Write for a free brochure/application:  
**CONPALS® INMATECONNECTIONS.COM® LLC**  
465 NE 181st Ave. #308 Dept. PLN  
Portland, OR 97230-6660

Email inquiries and Federal Corrlinks users:  
[info@convictpenpals.com](mailto:info@convictpenpals.com)

Since 2002



## Save on Prescription Eyeglasses & Shades

Send for a **FREE** Catalog  
Money Back Guarantee

**Prism Optical, Inc.**  
10954 NW 7th Ave  
Dept: LN0614  
Miami, FL 33168

Inquiries from Friends  
and Family Welcome  
1-800-637-4104

[www.prismoptical.com](http://www.prismoptical.com)  
[contact@prismoptical.com](mailto:contact@prismoptical.com)





## End of Mass Incarceration? (cont.)

make sure their convictions would warrant a prison rather than jail sentence. Despite these obstructions, the plan succeeded in moving some 25,000 people out of the state system over the next two years, but fell short of the court-mandated target.

In 2011, the Supreme Court issued a final verdict: the state had to reduce its prison population to 137.5% of capacity by the end of 2013. Brown then added a second round of “bonuses” to local authorities for his pass-the-buck strategy – \$315 million in extra funding to county sheriffs to accommodate their new admissions from the CDCR, with that amount to almost treble by 2015.

On the surface, Petersilia does seem to have a point – that the importance of this “cannot be overstated.” The issue is defining that importance. While Brown’s counter to the feds has bounced thousands out of state prisons, the medium- and long-term impacts remain in doubt. As more money drifts down to the county level, more sheriffs may opt to expand jail capacity rather than fund programs. If this occurs, the net result could be no significant reduction in the ranks of the incarcerated but simply more people in county jails and less people in state prisons. This would be a clear-cut loss for the men and women behind bars, since nearly any state prison, even California’s violent and racially segregated facilities where I spent a little over three years, offers programs and services vastly superior to those of most county jails.

On the other hand, if realignment were to succeed and keep reducing the number of people incarcerated in the Golden State,

Governor Brown would have discovered a way of decarcerating by administrative fiat rather than via a philosophical shift or by significantly modifying draconian legislation and carceral practice.

Ultimately, the importance of Brown’s initiative may actually be in realigning the CDCR with private prison providers. While California has largely avoided private prisons, with Brown under the gun to reach the 137.5% population cap by the end of 2013 [*Ed. note: the deadline has since been extended*], the governor signed an agreement with Corrections Corporation of America (CCA) to lease a minimum-security facility in the Mojave Desert. While the privates generally are staunchly anti-union, the deal allegedly would staff the facility with guards from the ultra-right union, the California Correctional Peace Officers Association (CCPOA), a major backer of Brown’s campaign.

In the meantime, CURB and many other groups continue to advocate against any expansion of the CDCR’s capacity, consistently calling for the release of people with non-violent cases as a more meaningful alternative than Brown’s administrative restructuring.

California’s process demonstrates how decarceration is about far more than numbers. The recent hunger strike by men in the Security Housing Unit in Pelican Bay provides evidence that the punishment paradigm remains alive and well in California. Brown and CDCR officials’ steadfast refusal to negotiate with hunger strikers, who were demanding an end to the isolation cells in which some of them had remained for over four decades, revealed that little had been realigned in the minds of criminal justice authorities in the Golden

State. Only continued pressure from below by organizations like CURB is likely to yield more permanent results.

## Texas

THE UPBEAT VERSION OF RECENT CRIMINAL justice history in Texas characterizes the state as a poster child for early adoption of prison reform. The narrative goes like this: when 2007 budget projections showed Texas would need 17,000 prison beds in the next five years at a cost of \$1.6 billion, a now-retired, cherry red state legislator named Jerry Madden stepped in. A series of startling reforms ensued – including the spread of drug courts, mental health and substance abuse treatment, and lower parole case loads. The resulting changes freed up some 12,000 beds in the state system, though Texas continued to carry out contracts with more than a dozen private prisons.

In policy terms, Texas – once the beacon for the “make my day” set – did soften, especially when it came to releasing people on parole. In addition, a broad-based coalition which included the ACLU of Texas, Grassroots Leadership, the Texas Criminal Justice Coalition, AFSCME Local 3807, the Texas Inmate Families Association and several other groups successfully foiled attempts at private prison expansion.

While the state managed to free up enough bed space to close several institutions, a look at the overall numbers is equivocal. Texas did register a decrease of almost 3,000 people in the state prison system from 2011 to 2012, but the numbers remain at 2005 levels of slightly over 152,000 – still the largest state prison system in the U.S. Furthermore, with an astronomical per capita incarceration rate of 923 per 100,000, Texas doesn’t amount

# FREE JAIL CALLS

Get A Free, Guaranteed ConsCallHome Number &  
20 Minutes Of Free Talk Time Every Month.



Call: 855-232-2012



[www.FreeJailCalls.com](http://www.FreeJailCalls.com)



just yet to any beacon of hope. As a recent post from the high-profile blog Grits for Breakfast asks, "If Texas justice reforms were so great, why does the state still have the nation's largest prison population?" Good question.

Where Texas has succeeded is juvenile justice. After a set of scandals involving abuse of youth in state lockups in 2007, authorities closed nine facilities and built community-based alternatives. Perhaps adult corrections officials should study their juvenile counterparts more seriously.

### The Federal System

LASTLY, WE COME TO THE FEDERAL SYSTEM – the nation's key carceral growth area. Despite the recent chest-beating by Attorney General Eric Holder about setting aside mandatory minimums, the federal Bureau of Prisons (BOP) has not succumbed even to the rhetoric of decarceration let alone the practice. Instead, the feds have adopted an expansion-oriented business model, partnering with private prisons to tap into the "niche market" of immigration detention, leading to an 84% rise in the number of people in immigration detention since 2005.

In addition, Congress has imposed a mandatory quota of 34,000 immigration detainees – Immigration and Customs Enforcement (ICE) cannot let the number fall below that figure, despite declines in actual "illegal" border crossings. Coupled with harsher immigration laws like Arizona's SB 1070, this has led to a spiking of deportations, with 2012 numbers surpassing 400,000 for the first time in history. In a previous *Counterpunch* article, I have termed this wave of deportations "The New Operation Wetback," after an actual U.S. government program in the 1950s which repatriated hundreds of thousands to Mexico. But nowadays deportation is not the only issue.

Under the current regime, people with a prior illegal entry conviction can be sentenced to up to two years in prison before being repatriated. Those with a previous felony conviction who enter the U.S. illegally can receive up to ten years, or 20 years if it was an "aggravated felony." Locking up the undocumented has become the primary face of mass incarceration, with the feds leading the charge. This has produced a drastic change in the demographics of

those who are incarcerated.

Since 2000, the number of African Americans in prison has actually fallen slightly but the ranks of Hispanics have increased by more than 50%. This has provided a lifeline for an almost moribund private corrections sector. While the privates control only 8% of the beds in the system nationwide, in the immigration detention sector they own and/or operate roughly half of the beds. Although the rate of African American incarceration remains about 50% higher than that of Hispanics, the large-scale operations of mass incarceration increasingly may be led by the troops of ICE rather than drug squads or SWAT teams.

### Conclusion

IN NEW YORK, A POPULAR MOBILIZATION along with politicians waking up to fiscal realities helped precipitate important changes. In Texas and California the results have been much more uneven, with political pushback and bureaucratic manipulations like realignment stalling comprehensive shifts. While the national and state-level conversation has altered, we stand at the precipice of a very complex period – the

- \* *Post-Conviction Specialists (Habeas Corpus/Coram Nobis/PRP/Certiorari/Sentence Modifications/DNA and more).*
- \* *Covers all 50 States and D.C., Federal District Courts, Federal Courts of Appeal, and Supreme Court.*
- \* *Comprehensive investigative services available.*
- \* *Experts and specialists available.*
- \* *Professional legal staff with extensive post conviction experience.*
- \* *Special programs available for United States Veterans.*
- \* *FREE initial consultation.*

### Legal Insights Inc.

25602 Alicia Parkway Suite 323

Laguna Hills, CA 92653

775-301-3588

[info@legalinsights.org](mailto:info@legalinsights.org)

A California 501(c)(3) Non-Profit Organization

msp | LAW



Michael Soukup

Licensed in Wisconsin and Illinois

Matthew Pinix\*

Licensed in Wisconsin

## Appealing a Conviction? Hire an Appellate Attorney.

You wouldn't hire a **heart surgeon** to perform **brain surgery**. Don't hire a **trial attorney** to handle **your appeal**. Hire someone who focuses on **criminal appeals**.

Hire the **Law Office of Matthew S. Pinix**, attorneys with more than 10-years' combined experience handling **criminal appeals** in **Wisconsin** and **Illinois**.

#### Law Office of Matthew S. Pinix, LLC

1200 East Capitol Drive, Suite 220

Milwaukee, Wisconsin 53211

(414) 963-6164

[www.pinixlawoffice.com](http://www.pinixlawoffice.com)

» Rated by Super Lawyers®

» Rated by avvo.com

» Better Business Bureau accredited

## End of Mass Incarceration? (cont.)

bursting of the bubble of prison construction can assume many forms.

Tracy Huling points out some of her concerns in this regard: “I am worried that ... entrenched special interests, including unions representing prison workers and for-profit private prison companies, might somehow combine to create the perfect storm.”

Citing California Governor Brown’s dealings with private prison kingpin CCA, Huling goes on to add, “In that kind of scenario, given the extent to which campaign contributions and other kinds of bribes already corrupt the democratic process, all rational public policy considerations about the costs and benefits of prisons might be thrown out the window.”

A key point which grows from Huling’s analysis is that significantly changing the prison industrial complex entails wresting money and resources from corrections for programs, and ultimately transformative processes that attack the problem at its core. In short, there is no stopping mass incarceration without redistribution of wealth and tax revenue, without attacking poverty and inequality.

Those who have benefited from mass incarceration will find new ways to resist change, new ways to brand and deliver their commodity. In 2010, private prison operator the GEO Group bought the nation’s largest electronic monitoring firm, BI Incorporated. Clearly, GEO Group CEO George Zoley, who earned \$7 million in 2010, thinks that GPS is part of the wave of the future. In a society where many people look for technological solutions to

social problems, electronic home incarceration – especially as the surveillance capacity of GPS escalates – offers many attractive possibilities for investors and corrections power brokers. If prison and jail cells are rendered too costly, with home detention, families can shoulder the expense of room and board and the state can extract daily user fees for the monitoring. Most programs already impose such user fees, typically from \$5 to \$17 a day.

Boutique prisons constitute a second reform which can sustain or expand incarceration. Not all forms of carceral punishment come with orange jumpsuits and electrified fences. Now we have a range of product variations designed to “humanize” the captive experience: “gender-responsive” institutions (which were part of Brown’s realignment), mental health lockups (the GEO Group had also heavily invested here), and family-friendly immigration detention centers where mothers and fathers do time with their children while awaiting adjudication. And lastly, in a society predicated on dividing the rich from the poor, we have the pay-to-stay facilities where folks in Beverly Hills or Anaheim can fork out \$150 a night not to have to sleep with the riffraff. All of these “alternatives” keep the resources and focus on detention and deprivation.

Ultimately, the reversal of mass incarceration necessitates not only designing genuine alternatives but transforming the dominant national mindset. Perhaps the biggest challenge to current thinking relates to notions of innocence and guilt. Often when I speak to people about decarceration or ending prison construction, they accuse me of advocating for the release of Charles Manson or backing drive-by shootings in inner-city communities. But hundreds of thousands of people behind bars fall between the “non-non-nons” and the Mansons. They should be released long before their ridiculously long sentences have expired.

These people and their families are the major victims of mass incarceration. They carry the violent label in a legal system that has been structured to punish the violence of the poor – particularly that of poor people of color. African American youth catch a violent label for possessing an unregistered gun, or get an assault on a police officer charge resulting from an aggressive stop-and-frisk. Latinos and poor whites earn the violent tag when they

commit a robbery born out of the desperation of addiction or just plain old no food in the house and no access to food stamps due to a drug conviction. The bottom line dictates that if we change peoples’ social and economic realities, we can change the way they act.

I have walked prison yards with many people I would not like to see back on the streets any time soon. But I have walked with far more people who were doing life or 30 years because they got backed into a corner where doing something destructive felt like or perhaps was the only option. To reduce U.S. incarceration rates to the relatively sane levels of other industrialized countries, we have to decarcerate more than the non-non-nons. This will only come about when the social movement addressing mass incarceration grows stronger and begins to grapple with the complex racialized nexus of imprisonment, poverty, inequality and the state.

### Postscript

LET ME END ON AN OPTIMISTIC BUT contradictory note. For the past eighteen months I have been involved in a campaign to stop a \$20 million jail project in the county where I live – Champaign, Illinois. [See: *PLN*, Feb. 2014, p.44].

After lots of ups and downs, the county sheriff, who had been the chief inspiration behind the jail plans, said that he had shifted in his thinking, was no longer asking for a cent for construction, and was ready to experiment with policies that would keep people out of jail and avoid spending money on incarceration.

At the end of the meeting, after considerable discussion, he reached out to shake my hand and I accepted. I thought about washing that hand as soon as I got home but I didn’t. Still, I’m not ready to call anyone a “correctional officer” just yet. Old habits die hard and they usually hang around for a reason. 🐾

*James Kilgore is a researcher, writer and social justice activist in Champaign, Illinois. He spent six weeks in a South African prison in 2002 before completing six-and-a-half years in U.S. prisons. He writes frequently on criminal justice issues and has published three novels. This article was originally published in Counterpunch in November 2013; it is reprinted with permission of the author, with minor edits.*

## TEXAS ONLY

Post-conviction State and  
Federal Habeas Corpus  
Parole Representation  
Family Law

### Ashley Burleson

Attorney and Counselor at Law  
1001 Texas Avenue, Suite 1400  
Houston, Texas 77002

# Lawsuits Challenge Conditions at Tennessee Jail; Five Charged in Bribery and Smuggling Scheme

**I**N THE WAKE OF A TENNESSEE FEDERAL district court hearing in a lawsuit challenging conditions at the Maury County Jail (MCJ), the number of suits filed by prisoners against the jail has nearly doubled.

At a September 2012 hearing, prisoners held at the MCJ testified they were losing weight and that the facility was overcrowded and infested with brown recluse spiders. They also claimed their requests for medical attention were often ignored.

At least 23 lawsuits concerning conditions at the MCJ have been filed. County Attorney Daniel Murphy, however, told the federal court at an October 29, 2012 hearing that the jail had made changes in response to prisoners' complaints; for example, meals were increased from 2,700 calories daily to 2,900. He also said new meal trays were provided, hygiene supplies such as toothpaste and shampoo have been increased, and old mattresses, which were worn and moldy, are being replaced.

Murphy further noted that the MCJ had formalized its grievance and medical request procedures and that 25 state prisoners had been transferred out of the facility to state prisons, to address overcrowding.

U.S. District Court Judge William Haynes commended the MCJ on taking action, but still was concerned about "the things that you can plainly see."

"[T]he bottom line here is that protecting the health of the inmates is the most important thing," he said. "You still have the steel doors on the showers that are rusted, and the vents in the showers

are heavily rusted."

The federal lawsuit that was the subject of the court hearings remains pending. See: *McGuire v. George*, U.S.D.C. (M.D. Tenn.), Case No. 1:12-cv-00082. Columbia attorney Eugene Hallworth, who represents the plaintiff in that case, has filed at least five other suits against the Maury County Sheriff's Department.

In related news, a grand jury issued an indictment charging five people, including an MCJ guard, with bribery and drug smuggling at the jail. The indictment was the culmination of a year-long investigation by the Tennessee Bureau of Investigation, FBI and Maury County Sheriff's Department.

The investigation found that MCJ guard Derek Wayne Turner, 38, was accepting cash payments to smuggle drugs and other contraband into the facility for prisoners James E. Pierce, 40, and Benjamin R. Bradley, 35. Also charged were Melinda A. Buie, Pierce's ex-girlfriend, and Linda Chapman, Bradley's mother. They all eventually pleaded guilty.

Turner and Chapman were sentenced in July 2013 to six months' incarceration plus two years on supervised release, and time served plus one year of supervised release, respectively. Buie was sentenced to two years' probation. And in October 2013, Pierce received 13 months in prison and three years on supervised release, while Bradley was sentenced to 11 months in prison plus three years' probation. ■

Sources: *Associated Press*, *The Daily Herald*, *The Republic*, [www.ktre.com](http://www.ktre.com)

# LEARN TO PROTECT YOUR RIGHTS

## YOU HAVE A RIGHT TO

- Adequate medical care
- Protection from assault
- Humane living conditions
- Safety from officer abuse

Learn how to defend your basic human rights with the comprehensive litigation guide, ***Protecting Your Health and Safety***, 2nd edition, written specifically for prisoners who are unable to receive help from a lawyer.

Written by Robert E. Toone  
Edited by Dan Manville  
*A Project of the Southern Poverty Law Center\**

**COST** \$16 total  
(\$10 + \$6 shipping/handling)  
FREE shipping/handling for orders from Prison Legal News over \$50

## ORDER A COPY

Send a check  
or money order to:  
**Prison Legal News**  
**PO Box 1151**  
**Lake Worth, FL 33460**  
**561-360-2523**

Be sure to include your name, identification number (if any), and mailing address. We also accept VISA and Mastercard. If using a credit card, please include the type of card (VISA or Mastercard), card number, and expiration date.

This book does not deal with legal defense against criminal charges or challenges to convictions that are on appeal. Edition last revised in 2009.

\*Please do not send orders to the Southern Poverty Law Center.

## WHEN IT IS YOUR FAMILY'S FUTURE, EXPERIENCE MATTERS

### STATE AND FEDERAL POST-CONVICTION AND APPEALS

Licensed since 1995, hundreds of appellate briefs and habeas petitions, capital qualified for habeas and appeals in Texas and U.S. Southern District of Texas, Motions for New Trial, Rule 35 and 60b motions, re-sentencing and arrest of judgment.

Call or write the Law Offices of Patrick F. McCann, 713-223-3805.  
909 Texas Ave, Ste 205, Houston, Texas 77002 • [writlawyer@justice.com](mailto:writlawyer@justice.com)  
**Serious financial inquiries only.**



# Jails Face Backlash, Class-action Lawsuits Over Debit Card Fees

by Matt Clarke

**T**HE SHERIFF OF DALLAS COUNTY, TEXAS had a good reason for giving prepaid debit cards to prisoners containing the balance of their trust fund accounts when they were released from jail.

"There was too much money handling," said Sheriff Lupe Valdez.

The cards contain the funds the prisoners had with them when they were booked into the facility, plus any money they received during their incarceration, less what they spent at the jail's commissary. But Valdez and the Dallas County Commissioners were surprised to learn that the debit cards come with fees, and that prisoners who use the cards are charged for accessing their own money.

The issue came to light when former prisoner Steve Mathis addressed the commissioners at the end of their first regular meeting in January 2013, to complain about the fees. County Judge Clay Jenkins and Commissioner John Wiley Price didn't like the idea of released prisoners having to pay debit card fees.

"But let me just tell you, it's his money," Price said, noting that was the first he'd heard about any fees. "He said he didn't give us no bank card [when he was jailed], he gave us cash. He should be able to get his money back. I got a real problem if they're being charged a fee."

Sheriff Valdez agreed, but said she didn't know much about the issue since Mathis was the first to complain about it. However, she promised to look into whether an ATM or kiosk could be placed in the jail complex so the debit cards could be redeemed with no fees.

Judge Jenkins said it would be one thing if a released prisoner could cash the card without fees by walking across the street or maybe just a few blocks away, but that is not the case.

The only places to exchange the debit cards for cash without incurring fees are two credit union locations, neither of which is within easy walking distance of the jail. A fee is charged if the cards are used at a bank not affiliated with the county's credit union; there is also a \$1.50 monthly fee even if the card is not used.

The Dallas County Jail is the first in Texas to use prepaid debit cards to return funds to released prisoners, but it is not alone in facing a backlash over debit card fees.

A former prisoner at the jail in Ramsey County, Minnesota filed suit in U.S. District Court in 2013 challenging fees on the debit card he was given upon his release.

Erik Mickelson had surrendered \$95 in cash when he was booked into the jail in May 2013 on a charge of violating the city's noise ordinance. But when he was released only a few hours later, he received a prepaid debit card with a \$25 deduction for a mandatory booking fee plus a fee schedule that would start reducing the balance on the card within three days, according to his lawsuit. He alleged the fees included \$2.75 for using an ATM, \$1.50 to check the card's balance and \$3.00 to transfer the money to a bank account.

"We just think that's stealing," said Mickelson's attorney, Joshua Williams. "The policy doesn't pass the sniff test."

Williams said Mickelson did not have the option of receiving a check instead of the prepaid card. "If this were a situation where someone, for whatever reason, decided that they wanted to get one of these preloaded debit cards, and they agreed to the fees, then that would be one thing," Williams noted. "But they are giving the debit cards without anyone having any meaningful say in the matter."

Ramsey County replaced paper checks with the debit cards in 2012. Responding to Mickelson's suit, the county denied most of the allegations but conceded the mandatory booking fee had been deducted from Mickelson's funds and acknowledged that the cards included usage fees. The lawsuit, which seeks class-action status, remains pending. See: *Mickelson v. County of Ramsey*, U.S.D.C. (D. Minn.), Case No. 0:13-cv-02911-SRN-FLN.

A lawsuit raising similar claims was filed in federal court in April 2012 by a former prisoner who had been held at a jail in Benton County, Arkansas, naming

Benton County Sheriff Kelly Cradduck and Keefe Commissary Network as defendants. Keefe issues prepaid debit cards to prisoners released from the jail and collects fees on the cards, including a \$1.50 weekly "maintenance" fee.

Attorneys for Keefe defended the fees when they responded to the suit. The company maintained that the "so-called 'numerous and exorbitant fees' at issue involved less than \$14,000 in debit card usage fees" out of \$260,000 issued to released prisoners in prepaid debit cards over a 14-month period. The lawsuit claimed that the debit card fees are "paid to Defendant Keefe in consideration of a kickback that Defendant Cradduck receives" from the company.

The parties in the class-action lawsuit reached a proposed settlement in April 2014; the class members include all people who were held at the Benton County Jail on or after April 19, 2012 who received a prepaid debit card when they were released. The county has agreed to pay \$71,609.58 into a settlement fund, which includes \$50,385 in attorney's fees and costs. The four named plaintiffs in the suit will receive incentive payments of \$1,000 each.

The settlement has not yet been approved by the federal district court, and the case remains pending. See: *Adams v. Benton County Sheriff*, U.S.D.C. (W.D. Ark.), Case No. 5:13-cv-05074-PKH.

Former prisoners at the Sequoyah County Jail in Sallisaw, Oklahoma have also complained about debit card fees, but Chief Deputy Roger Fuller defended the practice, which was implemented in 2010. Fuller said the debit cards, provided by Swanson Services Corp., prevent jail employees from stealing prisoners' funds – which had happened in the past.

"It's been really helpful, especially with the responsibility of dealing with money," he observed.

Until a class-action lawsuit challenging the debit card fees is filed, that is. ■

Sources: *Dallas Morning News*, [www.kernews.org](http://www.kernews.org), [www.startribune.com](http://www.startribune.com)

## ***FIYA GIRLS IS HERE!!!***

Check us out! ***We are the best in the game!!*** Here we have the sexiest and hottest babes. We have plenty of nail biting catalogs, with different types of breath-taking women of all races to choose from. **Fiya girls catalogs has the biggest selections to choose from.**

1. Send **\$2.00 or 5 stamps** to receive hi gloss color catalog **#19**. It has **over 450 white girls, coeds**, and Spanish girls. All hot poses in bras, g strings and panties. It also comes with 1 free pic.
2. Send \$2.00 or 5 stamps to receive hi gloss color catalog **#18**. It comes with one free pic. It has over 440 new black, white, and Spanish girls. All have "Super Big Apple Bottoms!" You don't want to miss out on catalog 18 and 19. **ALWAYS SEND AN ALTERNATE ADDRESS WITH YOUR ORDER IN CASE YOUR ORDER IS REJECTED. WE WILL SEND IT TO THE STREET ADDRESS THAT YOU PROVIDED US WITH.**
3. If your jail or prison is strict on sexy photos, send \$3.00 along with an S.A.S.E for the get in cat #1. They will let it in and the photos too.
4. Send \$13.00 to get a non nude 10 pic get in set. Make sure to say if you want black or white girls when you want a get in 10 pic set.
5. Send \$20.00 to get the 30 pic get in set and a free get in cat #1. It contains all races wearing bikinis on beaches and beside pools . **Get the all NEW supersized high gloss color VIP catalog #4**. Over thousands to choose from. All Races! Non nude strippers, porn stars, and all!!! Only \$15.00 (Free S/H) Includes 2 free pics. Price on all pics in VIP cat #4 is now **only 75cents each**. Must choose at least 15 pics. And send a S.A.S.E for each envelope. We ship up to 22 pics per envelope. You need to put 2 postage stamps on each envelope.
6. **ALL NUDE CATALOG PACKAGE ONLY \$15.00. Comes with free pics.**
7. Get mail get paid book is still only \$10.00.
8. **We have over 100 10 pic sets of black, white and Asian women in sets of 10 different poses. These are very hot 10 pic sets. Only \$13.00 a set or you can choose 3 sets for \$23.00. The sets can be seen on the back of the price sheets.**
9. **VIP yearly membership is only \$45.00** (see the back of order form for more information).
10. **Send \$5.00 to get one of the hottest all white girls coed catalogs on the market cat#11. It has over 450 to choose from.**
11. **Cat #20 has over 400 sexy white girls** to choose from. Send \$3.00 to get it.
12. The 5 pack has a large selection of ebony women with apple bottoms mixed in with Asian and white women. It's hot!! Send only \$7.00. It comes with 2 free pics. It has hundreds to choose from.
13. **50 PICS OF HOT NON NUDE WITH THE BEST QUALITY ASIANS WEARING LINGERIE AND BIKINIS FOR ONLY \$25.00 FREE SHIPPING.**
14. **VOL#1. 50 PICS OF HOT NON NUDE BEST QUALITY MIXED SET OF WHITE, BLACK AND SPANISH GIRLS AND PORN STARS WEARING STRIPPER OUTFITS ONLY \$25.00 FREE SHIPPING.**
15. **VOL#2, 3, 4, AND 5 HAVE 50 PIC SETS OF WHITE, BLACK, AND LATIN GIRLS EACH 50 PIC SET IS ONLY \$25.00 FREE SHIPPING.**
16. **BUY ALL 5 GRAB BAGS AND GET VIP CAT 4 FOR FREE!!**
17. **WE HAVE ALL NUDE 50 PIC GRAB BAG SETS EACH SET HAS A MIX OF RACES. THEY ARE ONLY \$25.00 A SET. FREE SHIPPING! THERE ARE A TOTAL OF 10 SETS. VOL#1-10. BUY ALL 10 NUDE SETS AND GET 50 FREE SHOTS!**

**PLEASE MAKE ALL PAYMENTS TO  
FIYA GIRLS  
P.O. BOX 2545 DEPT-PN  
HOUMA, LA 70361**

TO GET LISTED ON THE LOVEAPRISONER.COM WEBSITE, SEND \$3.00 FOR ALL INFO TO RECEIVE A BROCHURE AND INFO ON THE PHOTO SERVICES PROVIDED BY LOVEAPRISONER.COM. SEND \$25.00 ALONG WITH YOUR PIC AND A 250 WORD BIO TO GET A BROCHURE AND GET POSTED ON THE LOVEAPRISONER.COM WEB SITE FOR ONE YEAR . MAKE ALL PAYMENTS TO:

LOVEAPRISONER.COM P.O .BOX 5563 THIBODAU, LA 70302

# Despite Reforms, Juvenile Offenders in Texas Remain Endangered

by Matt Clarke

**T**WO STUDIES BY THE LBJ SCHOOL OF Public Affairs at the University of Texas at Austin found that juveniles held in Texas jails while awaiting trial as adults are often isolated with no access to education programs, and that violence remains prevalent in state juvenile facilities in spite of recent reforms.

Texas' juvenile system, which has been renamed the Texas Juvenile Justice Department (TJJJD), was rocked by months of violence during 2012 in the agency's six secure facilities – especially the Giddings State School and Corsicana Residential Treatment Center. The spike in violence echoed widespread reports of abuse and misconduct in 2007 that resulted in substantial changes in the state's juvenile justice system.

For the first study by the LBJ School of Public Affairs (LBJ), 41 jails were asked to complete a survey related to incarcerated juveniles, their access to programs and whether they were separated from adult prisoners. The results indicated there were few prisoners under the age of 17 held in Texas jails – only 34 during the survey months of October and November 2011. The survey also showed that in 30 of the jails – roughly three-fourths – adults and juveniles were incarcerated separately. However, the report noted that juveniles might come into contact with adult prisoners during showers, recreation or meals.

“National research indicates that juveniles in adult facilities are five times more likely to be victims of sexual abuse and rape than youths who are kept in the juvenile system,” according to the report.

On May 7, 2012, two days before the LBJ report was released, Texas Attorney General Greg Abbott issued a ruling requiring jails to separate adult and juvenile prisoners.

However, even with separation there are problems. Most of the juveniles housed separately from adults are kept in long-term isolation, which may result in mental health issues and limits their access to education programs. The report noted that the lack of educational opportunities might also violate state and federal law.

“It amounts to solitary confinement

for kids for anywhere from six months to a year while they await trial,” said Professor Michele Deitch, the study's lead author and an expert on jail conditions. “We're sending them back out onto the streets having deteriorated mentally” and having fallen far behind in their studies, she added.

With that in mind, Travis County Judge Jeanne Meurer has made use of a 2011 law that allows judges to order a juvenile defendant charged as an adult to be sent to a juvenile detention facility to await trial.

“My philosophy is to the extent possible kids should remain in juvenile facilities,” said Meurer. However, she acknowledged that was “not always possible” because counties need discretion when dealing with juvenile offenders who are extremely violent.

Once convicted, Texas juveniles not certified as adults are sent to the TJJJD, but their treatment at state juvenile facilities has not been much better than that experienced by youths held in adult jails.

LBJ convened a second study in 2012 after the TJJJD was rocked by high levels of violence. The crisis was so great that, in May 2012, Texas Governor Rick Perry temporarily reassigned his fix-it man, Jay Kimbrough, to the TJJJD from his post as the state's Assistant Director for Homeland Security.

Kimbrough was no stranger to the TJJJD; he had been appointed as a special master and later conservator of what was previously known as the Texas Youth Commission following a sex abuse, physical abuse and cover-up scandal in 2007. [See: *PLN*, March 2010, p.28; May 2009, p.24; Feb. 2008, p.1].

His task at the TJJJD was to quell the escalating violence, extortion and gang activity among juvenile offenders, particularly at the Giddings State School. Remedial measures included hiring more staff, providing incentives for good behavior and requiring employees at Giddings to wear uniforms to create a more professional environment. Kimbrough also was involved in implementing the Phoenix Program, which provides intensive counseling in a secure setting for juveniles who commit violent

offenses against staff and other youths.

Professor Deitch said the second LBJ study was initiated following a request by the TJJJD's Office of Independent Ombudsman “in the wake of numerous accounts of increasing youth violence in the state-run secure juvenile facilities during 2012.” The report, titled “Understanding and Addressing Youth Violence in the Texas Juvenile Justice Department,” was released in May 2013.

Deitch said the study recognized that reforms within the TJJJD were underway, but noted “there are several findings in the report that raise particular concerns.” The report's key finding was that violence and disruptive behavior by juvenile offenders continued to increase through the end of 2012, as did non-violent major rule violations. “TJJJD appears to have a problem with managing youth behavior generally, not just a problem with violence,” Deitch wrote.

The second LBJ report also faulted the TJJJD for treating youth violence as a short-term problem rather than developing “comprehensive and proactive approaches to behavior management” to deal with the violence as a “long-term chronic issue.” Further, the report found that behavior problems differed at TJJJD facilities. The finding suggested “a lack of consistency in the way programs and procedures are implemented across the agency.”

According to the study, violence and behavior problems were the worst at the Corsicana facility, which houses mentally ill juveniles. “The Corsicana Residential Treatment Center for youth with serious mental illness has, by far, the highest levels of violent and disruptive behavior in [the TJJJD],” the report said. “This calls into question not only the safety of youth in the facility but also the effectiveness of the programming taking place there and the appropriateness of this setting for a treatment purpose.”

A report released by the TJJJD in June 2013 recommended closing Corsicana because the facility “continues to pose a risk to the vulnerable youth population it serves as hazardous debris and glass are continually unearthed after rain or strong winds.” The roughly 90 youths at the facility were using

the glass and debris to harm themselves, the report stated.

Corsicana was responsible for 32% of all violent incidents in the TJJD in 2012, even though it held only 10% of the agency's secure facility population. The juveniles housed at Corsicana were removed in December 2013 at the direction of the Texas legislature.

The second LBJ study also suggested that TJJD staff had contributed to misconduct by juveniles due to the overuse of security units (i.e., segregation) as a tool to manage bad behavior. "The data suggest that the placement of youth in these punitive settings may in fact be contributing to misbehavior rather than deterring it," the report said, citing a "stunningly high number" of placements in security units. In fact, during some weeks of the study, there were "more referrals to the security units than ... youth in the facilities."

The LBJ report was not entirely negative. Researchers found that juveniles in secure TJJD facilities reported feeling safe despite the violence and misbehavior. "Most incidents do not result in serious bodily injury and do not involve weapons," the study

noted, "and of particular importance given the agency's history, youth do not report sexual assault to be a significant problem."

Professor Deitch said researchers at LBJ hope the information in their report "can help guide some of TJJD's continuing reform efforts," because the conclusions provide "a number of recommendations directed to TJJD administrators and legislators."

She added, "Drawing on the advice of top experts from around the country, we recommend the development of a multi-tiered behavior management plan that incorporates preventive elements, intervention strategies, and a graduated system of discipline that includes both intensified interventions and immediate consequences."

In another report issued by TJJD Independent Ombudsman Debbie Unruh in October 2013, violence was also found to be an issue at the agency's McLennan County State Juvenile Correctional Facility – specifically, staff-on-juvenile assaults. The report detailed at least three incidents when guards in the Phoenix Program at McLennan fought with juveniles, including throwing them to the ground, holding them

down and punching them in the ribs.

Some of the incidents were caught on security cameras, but in one case, the report said, a guard told a juvenile to cover the security camera before they began fighting. Several youths told investigators that the fighting was nothing more than "horseplay."

"The youth stated that the practice was for the staff and youth to trade punches in the ribs until one or the other gave up," the report stated. "Some youth claimed they did not want to participate but felt they would be made fun of if they refused."

TJJD spokesman Jim Hurley said such incidents constituted "totally unacceptable behavior.... There's no such thing as horseplay at TJJD."

Three guards were fired and four were disciplined in response to an investigation by the TJJD's Office of the Inspector General into fights involving staff at the McLennan facility. ■

Sources: *Texas Tribune*, *Austin American-Statesman*, *Texas Observer*, [www.texasajc.org](http://www.texasajc.org), [www.publicintegrity.org](http://www.publicintegrity.org), [www.gritsforbreakfast.blogspot.com](http://www.gritsforbreakfast.blogspot.com)



**JailCallsUSA**  
**\$9.95** per month  
**\*UNLIMITED JAIL CALLS\***  
**"WE BEAT ALL OUR COMPETITORS"**  
**SWITCH TO US TODAY!!**  
 No Contracts  
 No Credit Checks  
 No Equipment to buy  
**LOWER THE CALL RATES FOR:**  
 GLOBAL TEL LINK  
 SECURUS  
 V-CONNECT  
 PAYTEL  
 ICSOLUTIONS  
 VAC  
 PLUS MORE  
**FEDERAL \* STATE \* COUNTY**  
 SAME DAY ACTIVATION - NO PER MINUTE CHARGES ON OUR END. JUST \$9.95 A MONTH!  
**GET A LOCAL NUMBER TODAY**  
**888-776-2012**  
**www.JailCallsUSA.com**  
 Online Payments Accepted   



**ORDER THE NEW PRISON OFFICIAL CATALOG - ONLY \$10**  
**PRISON OFFICIAL**  
**INMATES #1 RECOMMENDED**  
**ISSUE#1 OR ISSUE#2**  
**\$5 FREE HOT MODEL PHOTOS INCLUDED WITH PURCHASE!**  
**CORRECTIONAL FACILITY APPROVED**  
**GET MAIL**  **DONT DELAY**  
**ORDER THE NEW PEN PAL LIST**  
**OF 50 REAL ADDRESSES TO**  
**FEMALES WAITING TO CORRESPOND**  
**TO PRISONERS**  
**RECENT PHOTOS INCLUDED!**  
**SEND \$49.95**  
  
 Inmates post your profile on our Pen Pal website  
**www.PrisonOfficial.com**  
 2 year membership - Send \$30  
 250 word limit send S.A.S.E for return of your photo  
**Send Facility Checks/Money Orders To:**  
**MUST ADD \$2 S/H**  
**TO ALL ORDERS**  
**PRISON OFFICIAL**  
**P.O. BOX 1427**  
**WARRENVILLE IL 60555**



# Ex-football Star Exonerated a Decade after Rape Conviction

**A** CALIFORNIA HIGH SCHOOL FOOTBALL star who was exonerated after serving five years in prison for kidnapping and raping a classmate has fulfilled his dream of playing for the NFL, and there are now plans to make a movie about his ordeal. Meanwhile, the woman who falsely accused him has been ordered to pay \$2.6 million.

The crowd in the Georgia Dome in Atlanta cheered when Brian Banks, 28, took the field wearing an Atlanta Falcons uniform in the fourth quarter of a pre-season game on August 8, 2013. The 6-foot-2, 250-pound linebacker racked up two tackles during the Falcons' 34-10 loss to the Cincinnati Bengals.

"It was definitely a good feeling," Banks said. "It was one of those things where, coming from where you're coming from, just to have people support you chasing a dream. These guys have been working on this all their life. From Pop Warner [youth football program] to high school to college, this is what they've been doing. For them to accept me, and let me be a part of it, and just get out here and play and show what I can do is more than I can ask for."

Although he was cut from the Falcons' lineup before the regular season, Banks signed a movie deal with Giddens Media, which intends to tell his story in a full-length feature film. The entertainment website *TMZ* reported on January 9, 2014 that the movie will portray Banks' fight to clear his name, and how he went from being a convicted sex offender to an NFL player.

Banks' saga began in 2002 while he was attending summer school at Long Beach Polytechnic High School with plans to attend the University of Southern California and play linebacker for the Trojans. His dream of college and eventually the NFL was shattered when classmate Wanetta Gibson, a sophomore, accused him of kidnapping and raping her in a school stairwell.

Banks said his attorney urged him to plead no contest to the charges and accept a plea bargain for a little more than five years in prison, followed by probation and registration as a sex offender. Banks, who was 17 at the time, said his lawyer told him he would face 41 years-to-life if he didn't accept the deal and lost at trial – despite a

lack of DNA evidence in the case.

Banks took the plea bargain but never gave up his claim of innocence and continued to fight his wrongful conviction. He contacted the California Innocence Project, which is staffed with students from the California Western School of Law in San Diego, but was told his was an unwinnable "she-said, he-said" case.

"He reached out to us," said Justin Brooks, director of the California Innocence Project, "[but] there was no evidence that was going to get him out of prison."

Brooks noted that situations like the one faced by Banks are increasingly common. "Plea bargains have become the 95% solution," he told *CNN*.

Banks was released from prison in 2007 and placed on probation. He had to register as a sex offender, wear a GPS monitor, and stay away from schools and parks. Then, in March 2011, Wanetta Gibson contacted him on Facebook. She said she had received a large settlement from the school district years before as a result of the false rape claim. Gibson stated she wanted to "let bygones be bygones" and help Banks clear his name, but was afraid she would lose the settlement money if she told the truth.

"I will go through with helping you, but all that money they gave us, I mean, gave me, I don't want to have to pay it back, all of it, because that would take a long time," she said.

Banks contacted private investigator Freddie Parish, whose son had played football with Banks in high school, and Parish used a hidden camera to record a meeting between Banks and Gibson. It was during that meeting that Gibson recanted, acknowledging that Banks had never raped her and that she had made the whole thing up. With the videotape in hand, the Innocence Project decided it could finally get involved.

On May 24, 2012, a Long Beach Superior Court judge threw out the case against Banks after prosecutors moved to have his conviction dismissed due to the recorded conversation in which Gibson admitted he was innocent. "We do not believe Mr. Banks did the crime he pled guilty to," said Deputy District Attorney Brentford Ferreira. "Justice has been served."

Apparently, "justice" for Ferreira includes a wrongful conviction, serving five years in prison and registering as a sex offender before being exonerated due to a chance confession by the alleged victim.

"It's been a struggle. But I'm unbroken and I'm still here today," Banks, then 26, said outside the courthouse. On August 3, 2013, ten months after the judge dismissed his conviction, Banks signed on with the Atlanta Falcons.

"Talk about coming from the bottom," he told reporters after the signing ceremony. "I know all too well what that is and what it looks like and what it feels like."

Banks said he gave up hope of someday playing in the NFL when he was sentenced to prison. "I had to watch my class go on and receive scholarships and play collegiate football on a high level," he said. "For me I had to let those dreams go for me to focus on what was ahead of me, and that was five years in prison. That was a completely different life of violence and being away from your family.... Football was the last thing on my mind, and it wasn't until a few months before I was actually being released from prison that I thought about possibly trying to play football again."

Banks is currently – and appropriately – a free agent after being cut from the Falcons.

On June 14, 2013, a Los Angeles Superior Court ordered Wanetta Gibson to pay a \$2.6 million judgment, including \$1.5 million from her settlement with the Long Beach Polytechnic School District plus interest, attorney's fees and \$1 million in punitive damages for making a false claim. ■

Sources: *San Diego Union-Tribune*, [www.utsandiego.com](http://www.utsandiego.com), *Community of the Wrongly Accused*, [www.cnn.com](http://www.cnn.com), [www.tzm.com](http://www.tzm.com), [www.nbclosangeles.com](http://www.nbclosangeles.com), *Long Beach Press Telegram*

## Roget's Thesaurus

Can't think of the right word?  
Let Roget's help you! Over 11,000  
words listed alphabetically.  
See page 61 for more information.

# States Renewing Their Prison Phone Contracts

*As state DOCs renew or rebid their prison phone contracts, you can help urge them to lower intrastate phone rates and eliminate commission kickbacks!*

*The Campaign for Prison Phone Justice needs your help in:*

**\*\*\*\* Virginia, West Virginia and Utah \*\*\*\***

The Departments of Corrections in the above states are in the process of re-bidding or renewing their prison phone contracts. Most DOCs receive a commission (kickback) on revenue generated from calls made by prisoners, which results in excessively high phone rates. Although the FCC voted last year to cap the costs of interstate (long distance) prison calls, which went into effect on February 11, 2014, the order does not apply to intrastate (in-state) calls. An estimated 85% of prison phone calls are in-state. This is an opportunity to ask DOCs to forgo commissions and ensure their new prison phone contracts are based on the lowest cost to those who pay for the calls – mostly prisoners' families.

## **Take Action NOW! Here's What YOU Can Do!**

Ask your family members and friends to write, email, call and fax the DOC and the governor's office (addresses and contacts are listed below), requesting that the DOC: 1) forgo commission payments when re-bidding or renewing its prison phone contract, and 2) base the new contract on the lowest calling costs. Lower prison phone rates should apply not just to long distance calls but also to in-state calls. For a sample letter or to easily send an email, visit the Campaign for Prison Phone Justice's website and click on the "Take Action" tab:

**[www.phonejustice.org](http://www.phonejustice.org)**

### **Prison phone contract information & Contacts:**

**Virginia:** Receives a 35% kickback; existing contract expires on 6-30-2014. Charges \$6.00 for a 15-minute collect intrastate call and \$1.00 for a collect local call. **Contacts:** Virginia DOC, Director Harold Clarke, P.O. Box 26963, Richmond, VA 23261; ph: 804-674-3000, fax: 804-674-3509, email: [director.clarke@vadoc.virginia.gov](mailto:director.clarke@vadoc.virginia.gov). Governor Terry McAuliffe, 1111 East Broad Street, Richmond, VA 23219; ph: 804-786-2211, fax: 804-371-6351, email: [traci.deshazor@governor.virginia.gov](mailto:traci.deshazor@governor.virginia.gov)

**West Virginia:** Receives a 46% kickback; existing contract expires on 6-30-2014. Charges \$3.85 for a 15-minute collect intrastate call and \$0.85 for a collect local call. **Contacts:** West Virginia DOC, Commissioner Jim Rubenstein, 1409 Greenbrier Street, Charleston, WV 25311; ph: 304-558-2036, fax: 304-558-5367, email: [James.E.Rubenstein@wv.gov](mailto:James.E.Rubenstein@wv.gov). Governor Earl Ray Tomblin, 1900 Kanawha Blvd. East, Charleston, WV 25305; ph: 304-558-2000 or 888-438-2731, fax: 304-558-2722, email: [governor@wv.gov](mailto:governor@wv.gov)

**Utah:** Receives a 55% kickback; existing contract expires on 7-31-2014. Charges \$4.60 for a 15-minute collect intrastate call and \$3.15 for a collect local call. **Contacts:** Utah DOC, Director Rollin Cook, 14717 South Minuteman Drive, Draper, UT 84020; ph: 801-545-5513, fax: 801-545-5726, email: [musher@utah.gov](mailto:musher@utah.gov). Governor Gary R. Herbert, State Capitol, Suite 200, Salt Lake City, UT 84114; ph: 801-538-1000 or 800-705-2464, fax: 801-538-1557, email: [sdeakin@utah.gov](mailto:sdeakin@utah.gov)

# U.S. Citizens without Remedy in Military Torture Case

by Derek Gilna

IN AN 8 TO 3 DECISION, THE *EN BANC* Seventh Circuit Court of Appeals reversed a ruling by Illinois U.S. District Court Judge Wayne Anderson, as well as an appellate panel that had partly affirmed that ruling, and held the judiciary should not “create a right of action for damages against soldiers who abusively interrogate or mistreat military prisoners, or fail to prevent improper detention and interrogation.”

The three appellate judges who dissented from the majority opinion argued that the plaintiffs, private American security contractors in Iraq, should have been afforded a *Bivins* remedy to redress their claims.

The dissent noted that both the facts and law provided an avenue by which Donald Vance and Nathan Ertel, employees of Shield Group Security (also known as National Shield Security) stationed in Iraq, could seek damages for what they contended was torture by U.S. military personnel.

According to the *en banc* decision, “Vance came to suspect that Shield was supplying weapons to groups opposed to the U.S.,” and became an FBI informant. However, after the individuals they had fingered accused Vance and Ertel of “gun-running,” they were arrested by American military officials in April 2006.

They were then “held in solitary confinement and denied access to counsel ... [and] interrogators used ‘threats of violence and actual violence, sleep deprivation and alteration, extremes of temperature, extremes of sound, light manipulation, threats of indefinite detention, denial of food, de-

nial of water, denial of needed medical care, yelling, prolonged solitary confinement, incommunicado detention, falsified allegations and other psychologically-disruptive and injurious techniques.” Vance and Ertel were classified as “security internees.”

Although called before a Detainee Status Board, they were prevented from presenting evidence of their innocence and the Board did not contact the FBI to verify their claims.

“Even Saddam Hussein had more legal counsel than I ever had,” Vance told the *New York Times*.

The Detainee Status Board finally released both Vance and Ertel, found them innocent of the gun-running allegations and did not charge them with a crime. Ertel was released in May 2006 but Vance remained in solitary confinement until July 2006. In contravention of the Army Field Manual, Vance “was subjected to sleep deprivation, prolonged exposure to cold, intolerably loud music, ‘hooding,’ ‘walling’ (placing a person’s heels against a wall and slamming his body backward into that wall), threats of violence, and other techniques that caused physical or mental pain.”

Vance and Ertel filed suit, seeking damages from the U.S. government and then-Secretary of State Donald Rumsfeld in both his individual and official capacities. They alleged that Rumsfeld had authorized the use of harsh interrogation techniques in Iraq, and that such involvement made him susceptible to personal liability.

In response, Rumsfeld argued that “federal law does not establish an action for damages on account of abusive military interrogation, that the complaint does not plausibly allege his personal involvement in plaintiffs’ detention, and that he is entitled to qualified immunity.”

The U.S. also moved to dismiss the complaint, arguing that the “military authority exception” to the Administrative Procedure Act, U.S.C. § 701(b)(1)(6), barred the lawsuit. That section prohibits judicial review of “military authority exercised in the field in time of war in occupied territory.”

Judge Anderson rejected those arguments, denied the motions to dismiss filed by Rumsfeld and the U.S. government,

and permitted discovery. An interlocutory appeal followed, and a Seventh Circuit panel reversed the district court’s decision as to the U.S. but affirmed with respect to Rumsfeld. See: *Vance v. Rumsfeld*, 653 F.3d 591 (7th Cir. 2011).

The *en banc* Court of Appeals concluded that unless a cause of action exists against “soldiers and their intermediate commanders,” none can exist against superiors such as Rumsfeld. The Court noted the historical antecedents of *Bivins* remedies, terming it one of only three instances where “the Supreme Court [has] created a non-statutory right of action for damages against federal employees.” It further stated that the “Supreme Court has never created or even favorably mentioned the possibility of a right of action for damages against military personnel....”

The appellate court then listed the various acts of Congress that might grant some relief to Vance and Ertel: the Detainee Treatment Act, Torture Victim Protection Act, Military Claims Act, Foreign Claims Act, Military Commission Act, War Crimes Act and the Uniform Code of Military Justice. The Seventh Circuit found that none provided for “damages against military personnel or other civilian superiors,” though they did call for compensation from the U.S. Treasury rather than the private bank accounts or assets of government or military employees.

Accordingly, the majority of the *en banc* Court of Appeals found that Rumsfeld could not be held personally liable because his connection to the alleged wrongdoing was too attenuated, and that *Ashcroft v. Iqbal*, 556 U.S. 5662 (2009) [*PLN*, July 2009, p.18] held that “knowledge of subordinates’ misconduct is not enough for liability. The supervisor must want the forbidden outcome to occur.”

The dissenting judges strongly disagreed, stating that if “a victim of torture by the Syrian military can find his torturer in the United States, U.S. law provides a civil remedy against the torturer” under the Torture Victim Protection Act, 28 U.S.C. § 1350. “Under the majority’s decision, civilian U.S. citizens who are tortured or worse by our military have no such remedy. That disparity attributes to our government and

**SMITH'S GUIDE to HABEAS CORPUS RELIEF**  
for State Prisoners under 28 U.S.C. §2254  
Example pleadings from the initial habeas corpus petition to the final petition for a writ of certiorari. Let Smith guide you step-by-step through the federal courts with confidence. 380 pages.

\$24.95 + \$6.95 shipping & handling. In CA add \$2.18 sales tax. Sent via USPS media mail. Money orders, personal or institutional checks ONLY. Send \$31.90 (In CA, \$34.08) payable to Roberts Company.  
Send name, address, prisoner #, and payment to:  
**Roberts Company, 15412 Electronic Lane #101**  
**Huntington Beach, CA 92649**  
Also available on Amazon.com

to our legal system a degree of hypocrisy that is breathtaking.”

The dissent also argued that the majority decision is “not required or justified by Supreme Court precedent, and it fails to carry out the judiciary’s responsibility to protect individual rights under the Constitution, including a right so basic as not to be tortured by our government.” The majority, they said, had “in effect create[d] a new absolute immunity from *Bivins* liability for all members of the U.S. military.”

They further noted that 1) “*Bivins* is available to prisoners who have been abused or mistreated by their federal jailors ... [and] that reasoning certainly extends to the torture alleged here...”

2) a *Bivins* action may be brought by civilians against military personnel who violate their rights, and 3) U.S. citizens who leave the United States take their constitutional rights with them. Finally, the dissent pointed out that previous lawsuits against public officials of the U.S. government have gone forward without undue concern for the effects such litigation might have upon the accused public officials’ personal finances.

The dissenting judges concluded that the majority had missed the point of the claims at issue in the case: “The plaintiffs may or may not be able to prove their allegations – it now is unlikely they will ever have the chance to try – but they allege that

the use of harsh interrogation techniques amounting to torture was the subject of Mr. Rumsfeld’s personal attention,” which “should be enough to withstand a motion to dismiss under Rule 12(b)(6).”

Vance and Ertel petitioned the U.S. Supreme Court for a writ of certiorari, which was denied on June 10, 2013 – leaving the majority *en banc* appellate ruling intact, and effectively holding that U.S. citizens subjected to torture by members of the U.S. military can not sue the federal government or military officials for damages. See: *Vance v. Rumsfeld*, 701 F.3d 193 (7th Cir. 2012), *cert. denied*. █

Additional source: [www.rt.com](http://www.rt.com)

## HotFlixx

Photo Service

- \$1/ Each -10 Picture Minimum
- High Quality/ Clear 4x6 Pictures
- Free Shipping /Fast Delivery
- Great Customer Service- We **LOVE** our customers!
- **FREE Catalog**- just send a SASE and tell us if you want a male or female catalog
- Custom Orders/ Special requests \$2/ each (example celebrity upskirts)
- Enlargements 5x7, 8x10 available

**The following catalogs are \$3 each**

Women Vols 1, 2, 3, 4, 5, 6, 7  
Action shots, Black Women,  
Asian, Latina, Plumpers Vols 1,2,  
Topless Vols 1,2, Boobs Vols 1,2,  
Camel Toe Vols 1,2, Tattoo Girls,  
Foot Fetish, Transsexual,  
Male Vols 1,2,3,4,5

\*We accept money orders/ inmate trust\*

**HotFlixx**  
**PO Box 137481**  
**Fort Worth, TX 76136**



# PRISONER ASSISTANT

REHABILITATION AND REENTRY PLANNING



**Join Our Exclusive Membership, Open a Bank Account and Gain Access to Our Services!**  
We only provide services to our clients, no exceptions. **MEMBERS ONLY**

Bank Account under your social security number. Deposits, Statements, Money Orders, Bank Checks, Green Dot, Stamp Exchange, Wire Transfers, Direct Deposit & PayPal.

**BANKING & FINANCE**



Internet Purchases, Gift Cards, Greeting Cards, Lottery, Sporting News & Current Events, People Search, Personal Shopper. "If It Can Be Done, We Will Try To Do It", see our catalog for more.

**Prisoner Concierge**

We can do any Graphic Design project. Printed Material, Musical Emails, Creative Writing, Photo Reproduction & Forwarding, Book Publishing, Book Cover Design, Press Releases, Portfolio Creation, and Website Building.

**GRAPHIC**



Mailboxes, Emails, Faxes, Texts, Scanning, Copies, Typing, Storage, Document Preparation, Internet Research, Prepaid, Contract & Computer Aided Phones.

**Virtual Office**

Place your profile on [prisonerassistant.com](http://prisonerassistant.com) and access our Special Features; Classifieds, Portfolios, Posts & Blogs, Market Place and Sponsor a Prisoner.

**social content media**

PO Box 704-AD1  
Lake Harmony, PA 18624-0704  
[www.prisonerassistant.com](http://www.prisonerassistant.com)  
[info@prisonerassistant.com](mailto:info@prisonerassistant.com)  
(570) 722-5800

For more information - send \$4.50 to "Prisoner Assistant" for an Application Package and 80 page color catalog. If you send an SASE you will only receive a brochure.



**Business Development**

**JOIN NOW!**



**Credit Development**

**The services below are available to all prisoners - not just our clients**

**Free E-Newsletter Update**

We have reviewed our E-Newsletter efforts via Corlinks and the benefits/inmate costs involved. The new E-newsletter arrival date will fluctuate and the frequency will be up to 5 times a month containing information relevant to Prisoner Assistant and reentry planning. Sign Up Today! [Info@prisonerassistant.com](mailto:Info@prisonerassistant.com)



**Banking and Financial Management Course**  
120 pages, complete course with 8 chapters and exams. Transcript and Certificate available. Send \$25.00 to Prisoner Assistant at the address above with a request for the course. Open to Everyone.



**Personal Reentry Guide and Journal**  
233 pages, complete course with 7 chapters and exams. Transcript and Certificate available. Send \$30.00 to Prisoner Assistant at the address above with a request for the course. Open to Everyone.



# Scared Straight Programs Remain Popular Among Parents Despite Warnings

by Elly Yu

**"I** FEEL LIKE I'M AT MY WIT'S END," SAYS a mother about her two kids on the A&E reality TV show "Beyond Scared Straight." It's a feeling many parents relate to before sending their kids to local "scared straight" programs.

Despite evidence that scared straight-type programs are ineffective and can even be harmful in the long run, many parents continue to turn to local jails for help when it comes to behavioral issues with their children.

"The programs are popular because parents think it's a quick fix," said Lt. Terron Hayes, director of intervention at the Dougherty County Sheriff's Office in Georgia.

Dougherty County administers its own youth intervention program, which has been featured several times on the A&E show. Since its television debut, Hayes says the Sheriff's office has had an influx of calls from parents who want to sign up their kids for the program. He says he's had kids come in from other counties and even from other states across the Southeast.

Gladys Davis, of Bronwood, Georgia, said she heard about the program through

her adult son. Her 14- and 15-year-old sons had been fighting with each other.

"I tried everything I could do as a parent," she said. She first tried reaching out to her local youth detention center, but was told the program there was for youth who had committed more serious offenses. After hearing about Dougherty County's program, she sent her sons to make an appointment with Hayes at the sheriff's office in February and said they haven't been back since.

"I'm just trying to get things under control so they won't get too serious," she said.

Hayes knows that the program won't get federal or state funding, and says that the jail tours are only part of his program. He says he incorporates counseling sessions with both the parents and the children, and that following-up is essential.

He says that when parents call, they are often at a weak point in their relationships with their children.

"I have parents saying, 'I can't do this anymore, you'll need to come get her, come get him - I don't want him anymore,'" Hayes said. "Because a parent has lost control, the

parent is out of resources, what do they have left?"

Anthony Petrosino, senior researcher at WestEd, has done extensive research on scared straight programs and conducted meta-analysis studies looking at them. He said the message that these types of programs don't work isn't getting out to parents.

"We found that scared straight, on average, has a harmful impact," Petrosino said. "There's a disconnect between who's getting the information and who isn't."

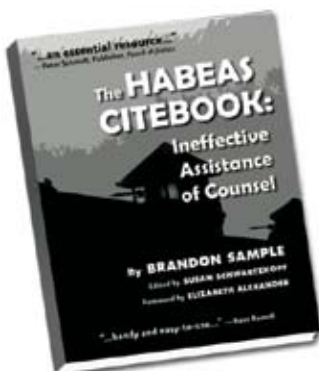
"The other thing is TV is powerful," he said.

"Beyond Scared Straight" has had some of the highest ratings on the network and is now in its sixth season.

Petrosino says he also receives calls from parents, uncles and pastors about how to get their children into a scared straight program, despite being a researcher. The parents weren't reading his reports.

"When you do a Google search, my name comes up," he said. "I said, 'I can't in good conscience recommend scared straight for your child.'"

He says he tries to direct them to local resources, but there's a lack of awareness



## FREE BOOK!

Get ***The Habeas Citebook*** with purchase of a 4-year subscription to *Prison Legal News*. Offer good for new subscriptions and renewals.

Special limited time only! All sales final and no refunds. Order now for this great deal worth \$49.95.

**Prison Legal News** • PO Box 1151 • Lake Worth, FL 33460  
Tel [561] 360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

## PENACON.COM

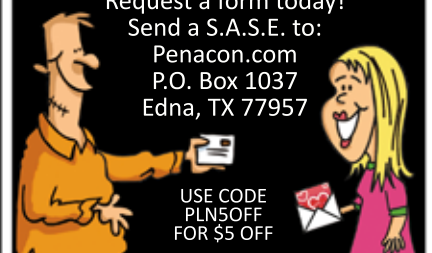
Helping the incarcerated community gain connections around the world!

Post your profile on an easy to navigate website for millions of viewers to see. Gain new penpals and look forward to receiving mail!

One Year Ad Only \$35  
Until Release Date Ad \$95

Request a form today!

Send a S.A.S.E. to:  
Penacon.com  
P.O. Box 1037  
Edna, TX 77957



USE CODE  
PLNSOFF  
FOR \$5 OFF

among parents on how to reach them.

"There's a missing gap there. They shouldn't be contacting me," Petrosino said.

The program continues to remain attractive not just for parents, but for local county jails because they're relatively cheap to run, he said. The prisoners aren't being paid for these programs and the jail tours often take groups of kids each time.

Many scared straight programs are also free, as it is in Dougherty County, which makes them appealing for parents who might not have a lot of resources.

Petrosino also mentioned in his report the "panacea phenomenon," which researcher James Finckenauer studied in scared straight programs. He said it's the public and media's "latching on for cure-alls" in something so complicated like crime.

"It's very hard to come with a cure that's going to turn them around," he said. "These are complicated problems with complicated origins."

Scared straight programs also fall in line with the "tough on crime" mentality

in the justice system, said Jeffrey Butts, director of research and evaluation at the John Jay College of Criminal Justice and an expert on criminal behavior.

"It's a strong thing in America that we believe that being tough on people, punishing people, coercing them – basically forcing them to behave the way we want them to behave – it will somehow work," he said.

He says that the scared straight programs might work if the person who's trying to "scare" them is someone the young person trusts and loves.

"The basic flaw in the program is there's no relationship formed," he said.

Programs that have been proven to be ineffective, however, still continue, and scared straight programs aren't the only ones. The D.A.R.E. drug prevention initiative, for instance, continues to be taught in certain schools despite evidence it doesn't work, Butts said.

Parents turning to local law enforcement to address behavioral problems aren't uncommon, said Maj. Steven Strickland, director of field operations at the Richmond County Sheriff's Office in Georgia. Rich-

mond County doesn't have a scared straight program, but Strickland says he'll often get calls from parents not knowing what to do with their child.

"We get a lot of folks that will bring their kids by and say kind of the same thing," Strickland said. "They'll say 'I can't make this kid do anything, you guys need to scare them.'"

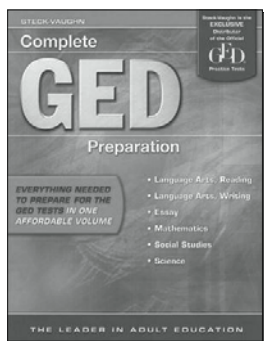
But he says that law enforcement officials aren't counselors.

"We're acting out of our league sometimes," Strickland said. "If you have a kid and he's 10 years old and he's troubled, there's only so much we can do in 20 to 30 minutes."

He says if a child has chronic issues, they need to be addressed over time by professionals who aren't in law enforcement.

"Where we make our greatest impact, if there really is an issue, is getting them to the resources," he said. ■

*This article was originally published by the Juvenile Justice Information Exchange (www.jjje.org) on May 9, 2014; it is reprinted with permission.*



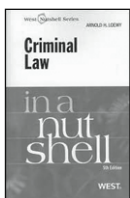
## Complete GED Preparation [Paperback]

Publisher: Steck-Vaughn; 2nd edition  
928 pages; \$24.99; Item #: 1099

Over 2,000 GED-style questions thoroughly prepare learners for test day. This single book offers thorough coverage of the revised GED Test with new test information, instruction, practice, and practice tests. Answer key included.

Order from: **Prison Legal News**  
(Add \$6 shipping for orders under \$50)  
**PO Box 1151**  
**Lake Worth, FL 33460**  
**Phone: (561) 360-2523**  
**www.prisonlegalnews.org**

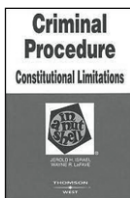
## New Titles Available in PLN's Bookstore



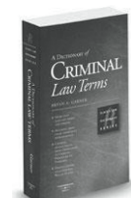
**Criminal Law in a Nutshell**, by Arnold H. Loewy,  
5th edition, 387 pages. **\$43.95**



**Advanced Criminal Procedure in a Nutshell**,  
by Mark E. Cammack and  
Norman M. Garland,  
2nd edition, 505 pages. **\$43.95**



**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFave,  
7th edition, 603 pages. **\$43.95**



**A Dictionary of Criminal Law Terms (Black's Law Dictionary® Series)**, by Bryan A. Garner, 768 pages. **\$33.95**

☐ Criminal Law in a Nutshell ☐ Advanced Criminal Procedures in a Nutshell ☐ Criminal Procedure  
☐ Dictionary of Criminal Law Terms

Amount enclosed (add \$6 S&H for orders under \$50; free shipping over \$50) \_\_\_\_\_

By ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**PRISON LEGAL NEWS**

PO Box 1151 • Lake Worth, FL 33460  
Tel [561] 360-2523 • www.prisonlegalnews.org

# Seventh Circuit: Atheism Considered a Religion; Survey of Prisoner Interest Required

by Mark Wilson

ON AUGUST 16, 2013, THE SEVENTH Circuit Court of Appeals held for the second time that a prisoner's request to form an atheist study group must be given the same consideration as other religious study groups.

Wisconsin prisoner James J. Kaufman, an atheist, asked to form a study group dedicated to atheism. Prison officials denied his request as one seeking to establish a nonreligious activity group. He then filed suit in federal court.

In 2005, the Seventh Circuit held that prison officials had violated Kaufman's First Amendment rights by refusing his request to create a religious study group dedicated to atheism while allowing other religious study groups. See: *Kaufman v. McCaughtry*, 419 F.3d 678 (7th Cir. 2005) (*Kaufman I*).

After Kaufman was transferred to the Stanley Correctional Institution, he "encountered nearly identical resistance to his efforts to create an atheist practice group."

Prisoners requesting to participate in religious study "fill out a Religious Preference form that allows them to select one of the recognized umbrella groups, 'no preference,' or 'other.' If the inmate selects 'other,' he may write in a religion. If the religion he specifies does not fall within one of the seven umbrella groups, he is not permitted

to attend a religious practice group, though he may practice on his own by visiting the religious library or meeting with the Chaplain individually."

Atheism is not included on the form and prison officials do "not keep records of what religion inmates write in after selecting 'other' on the form." Thus, they "do not know how many inmates have selected 'other' and written 'atheist,' 'humanist,' 'secular,' 'freethinker,' or another similar term."

When Kaufman asked to start an atheism study group, the chaplain at the Stanley Correctional Institution ignored *Kaufman I* and "recommended denying Kaufman's atheism group because it 'is not viewed as a religious request.'" The warden adopted the chaplain's recommendation.

Kaufman then filed a second lawsuit, challenging the denial under the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA). He offered "evidence indicating that if an inmate writes 'atheism,' the prison does not recognize this as a religion at all, and instead lumps the prisoner in with the 'No Preference' group."

The district court "recognized that the atheist study group is a religious one," but found that prison officials had advanced a "legitimate secular reason for prohibiting an atheist group: Only two inmates (including

Kaufman), it thought, have any interest in an atheist group, and it would be impractical to spend limited resources to create a study group for only two members."

The Seventh Circuit reversed, reiterating its holding in *Kaufman I* and finding that it could not "tell, on the record as it stands, if more inmates would have designated atheism if it had been an option on the preference form." The appellate court noted, "that is why political candidates push so hard to get their names on ballots; it is cold comfort to be told that one can run as a write-in."

Citing a 2012 survey of prison chaplains by the Pew Research Center, the Court of Appeals found "there might be at least as many prisoners interested in an atheist group as one sees in the Pagan, Eastern Religions, or Jewish groups." Ultimately, the Court concluded "that further exploration of the degree of interest that actually prevails at [the prison] is necessary before it will be possible to rule on Kaufman's claim.... Only a credible survey of the inmate population, or the simple expedient of adding 'atheist, agnostic, or humanist' to the preference form and collecting new data, can resolve this uncertainty."

The Seventh Circuit upheld the district court's dismissal of Kaufman's request for a "knowledge thought ring" as a symbol of

## CALIFORNIA LIFER NEWSLETTER

Published by Life Support Alliance

CLN: Comprehensive newsletter mailed every 8 weeks containing state and federal cases, parole board news, statistics, legislation and articles of interest to Lifers and their supporters.

### CLN SUBSCRIPTIONS

Prisoners .... \$30 per year (or 100 stamps)  
Others .... \$90 per year

Make checks payable to LSAEF

(Life Support Alliance Education Fund)

CLN, P.O. Box 277, Rancho Cordova, CA. 95741

CLN no longer provides copy service of legal cases, articles or news and materials from the Internet.

www.lifesupportalliance.org (916) 402-3750

**Incarcerated  
Entrepreneur  
Freight Agent  
Training Course**  
12 Module Training  
course takes you

through everything you will need to  
graduate and be a certified freight agent  
moving freight for commission.

Toll Free 1-877-238-9185

S.A.S.E. For more information To:

Lone Wolf Institute

1015 Townsend Dr. Pochontas, AR 72455

Payment plans available from \$25.00

[lonewolfarkansas@gmail.com](mailto:lonewolfarkansas@gmail.com)





his atheist beliefs, and of his claim alleging that atheist books he had donated were not placed in the prison library. See: *Kaufman v.*

*Pugh*, 733 F.3d 692 (7th Cir. 2013).

Following remand, the defendants filed a motion for summary judgment on

February 28, 2014, which remains pending. Atheism, incidentally, is one of the many faiths recognized by the U.S. military. ■

## Amount of Drugs a Factor for Departure Sentence in Kansas Prison Contraband Conviction

by David M. Reutter

**T**HE KANSAS SUPREME COURT REVERSED a prisoner's sentence for possession of contraband – a small amount of marijuana – after it held the sentencing court misinterpreted its statutory authority by concluding it could not consider a downward departure to the presumptive criminal sentence.

Prisoner Waddell Warren was convicted of introducing a controlled substance into a correctional facility and sentenced to an additional 122 months in prison. At sentencing, he requested a departure sentence because the amount of marijuana found in his socks was very small. The district court ruled it could not consider a lesser sentence on that basis.

Waddell appealed, and the Court

of Appeals reversed in February 2012. See: *Kansas v. Waddell*, 47 Kan. App. 2d 57, 270 P.3d 13 (Kan. Ct. App. 2012). The Kansas Supreme Court adopted the “well-written opinion” in that case as its own.

First, it helped that the appellate court had jurisdiction to hear the appeal. At the time Warren filed his appeal, Kansas law prohibited appellate courts from reviewing “any sentence that is within the presumptive sentence for the crime.” The effect of that statutory provision was to remove claims of prejudice, corrupt motive or an error involving a constitutional right from appellate review of a presumptive sentence. Since Warren's appeal did not involve any of those issues but did involve the district

court's misinterpretation of its sentencing options, the appellate court had jurisdiction to hear his appeal.

As to the merits of the case, there was “no reason that the quantity of drugs may not be taken into account as a sentencing-departure factor, just as it may be in nonprison cases involving drug possession.” Thus, “possession of only a small quantity of drugs constitutes a valid factor upon which a departure sentence may be entered on a prison-contraband sentence.” Waddell's sentence was vacated and the case remanded for resentencing “so that the district court may properly exercise the discretion given to it by statute.” See: *Kansas v. Warren*, 297 Kan. 881, 304 P.3d 1288 (Kan. 2013). ■

### Stamps for CASH!

*Great Goods will buy your stamps!*

**70%** of Face Value: Complete books or sheets of Forever Stamps

**65%** of Face Value: Complete books, sheets, or rolls of 45-cent stamps

**60%** of Face Value: Complete books or sheets of high denomination stamps above 45-cent

**Payment sent within 24 hours of receipt.**

**W**E WILL SEND your funds as a money order, electronic payment to anywhere you designate. Great Goods can also send payment to an approved package vendor. Please provide complete name and address of where to send your funds. Also include any required forms or special instructions.

Minimum money order of \$20. • No quantity of stamps too big. • No taped or stapled stamps. • Used, damaged, torn stamps not accepted and cannot be returned. • Stamps **MUST** be on original postal backing. • Only new stamps accepted.

• No singles or partials will be accepted and they cannot be returned.

## GREAT GOODS

PO Box 399, West Chesterfield NH 03466

[www.greatgoods.org](http://www.greatgoods.org)

STAMPS © USPS. ALL RIGHTS RESERVED.



## Utah Prisoner Awarded \$200 for Violation of Religious Rights

A FEDERAL DISTRICT COURT AWARDED \$200 to a Utah prisoner who sued on the grounds that prison officials interfered with his right to freely exercise his religion. However, the Tenth Circuit Court of Appeals dismissed part of the prisoner's appeal because he did not adequately brief some of his claims, and held that another claim was moot.

Danny Lee Warner, Jr. alleged that while he was held at the Utah State Prison, officials denied various requests that he said were necessary to practice his religion. Warner is a follower of Odinism, also known as Asatru and Odhvegr, which is a faith based on Norse mythology.

He asked for accommodations that included a metal or wood thorshammer medallion, wood runes, a wooden bowl and an altar cloth. In denying his requests, prison officials cited security concerns. Warner also alleged that for Winter Nights, an Odinist holiday period lasting several weeks, he was denied break-the-fast boxes (boxed meals to eat after sunset). Further, prison officials

refused to allow him access to a publication due to a ban on all materials from the publisher, National Vanguard Press.

Warner filed suit alleging that prison officials had violated his First Amendment rights to freedom of speech and free exercise of religion, as well as his Fourteenth Amendment rights to equal protect and due process. His lawsuit also claimed violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA) based on the denial of his request for break-the-fast boxes and the publication ban.

At the time the district court ruled on Warner's motion for summary judgment he had been transferred to the Florence Correctional Center in Arizona. Nonetheless, he proceeded on the grounds that he would be returned to Utah for incarceration at some point in the future. His lawsuit named the defendants in their official and individual capacities, and sought an injunction to prevent them from continuing to violate his rights.

The district court dismissed all but three of Warner's claims, finding that prison officials had violated the Fourteenth Amendment and RLUIPA by denying the break-the-fast boxes. The court further held that they had violated Warner's First Amendment rights and RLUIPA by banning the publication he requested.

The defendants conceded that Warner was entitled to nominal damages for the First Amendment, Fourteenth Amendment and RLUIPA violations. The court awarded \$100 in nominal damages on each of the two constitutional claims, for a \$200 total award.

The district court held that compensatory damages were prohibited by the Prison Litigation Reform Act because Warner had no physical injuries, and monetary damages were not available for RLUIPA violations. [See: *PLN*, Aug. 2011, p.22]. The court also declined to award punitive damages, as Warner did not specifically allege the defendants were motivated by an evil motive or intent, or had acted with reckless or callous indifference.

Finally, the district court found Warner was not entitled to an injunction that would have barred Utah prison officials from denying his religious rights. The court said that while it was likely Warner would

be returned to the Utah Department of Corrections (UDOC) at some point in the future, "there is little reason to believe that the violations proven here are likely to be repeated." The district court noted that the publication ban was not a formal policy but rather a misinterpretation of policy which had since been corrected, and that the UDOC had said it would allow followers of Odinism to receive break-the-fast boxes during Winter Nights.

As Warner had represented himself in the lawsuit, the court did not award attorney fees; it did, however, note that he may file a motion to recover costs, and commended him for his "zealous defense of his rights and for the exemplary manner in which he has litigated his claims here." See: *Warner v. Patterson*, U.S.D.C. (D. Utah), Case No. 2:08-cv-00519; 2012 U.S. Dist. LEXIS 131559 (D. Utah 2012).

Not satisfied with the district court's dismissal of most of his claims, Warner appealed to the Tenth Circuit. In an August 22, 2013 decision, the Court of Appeals said the arguments in Warner's appellate brief regarding the denial of his requests for thorshammer medallions, wood runes, a wooden bowl, other ritual items including an altar cloth and group worship were "insufficient to merit review," as they had not been adequately briefed.

The appellate court also affirmed the lower court's denial of an injunction against the UDOC and declared Warner's appeal of the RLUIPA claims moot because he was no longer incarcerated in Utah. "In deciding whether a case is moot, the crucial question is whether granting a present determination of the issues offered will have some effect in the real world," the Court of Appeals wrote. "When it becomes impossible for a court to grant effective relief, a live controversy ceases to exist, and the case becomes moot." As Warner was no longer in the UDOC's custody, "declaratory and injunctive relief therefore cannot affect defendants' treatment of him." Thus, the case was remanded to the district court to dismiss the RLUIPA claims.

Warner petitioned the U.S. Supreme Court for a writ of certiorari, which was denied on February 24, 2014. See: *Warner v. Patterson*, 534 Fed.Appx. 785 (10th Cir. 2013), cert. denied. ■

**STRENGTH STACK 52**  
114  
BODYWEIGHT  
EXERCISE  
CARDS  
INSIDE!



**JUST \$21.95!\***  
(shipping included)

**Experience the  
Game of Fit!**

Send money orders or institutional  
checks made payable to:  
Prisoner Assistant  
Po Box 704  
Lake Harmony PA 18624

**Features:**

- Soft cover book with perforated-card stock for playing cards.
- Many fitness games available.
- Effective NEW bodyweight training system.
- Exercise your entire body with no equipment.

# CHEAP LOCAL FEDERAL CALLS

*Get a local Number & Save up to 85% on Prison Calls with Sentel.*

*Save on International Calls with Sentel*

Below is a summary of the Great plans we offer:

ECONOMY PLAN (USA)	MEXICO PLAN	DOMINICAN REPUBLIC PLAN	USA & INTERNATIONAL
<b>Features:</b>  Price: <b>\$14.99</b> 400 Minutes Additional lines @ \$2.0 Additional Mins @ 5cents Best up to 4lines Monthly	<b>Features:</b>  Price: <b>\$34.99</b> 300 Minutes Additional Minutes @ 12 cents Add a line for \$2.5	<b>Features:</b>  Price: <b>\$39.99</b> 300 Minutes Additional Minutes @ 12.5 cents Add a line for \$2.5	<b>Features:</b>  Price for 1 <sup>st</sup> line: <b>\$1</b> Add a line: 50 cents Rates Based Upon Destination 6cents for USA Calls as low as 10 cents for INTER Guaranteed lowest rates Great for Multiple Lines

## LLAMADAS FEDERALES LOCALES BARATAS

Obtenga un número local de la prision y ahorre hasta un 85% en llamadas con Sentel.

*Ahorre en llamadas internacionales con Sentel*

A continuación se muestra un resumen de los Grandes planes que ofrecemos:

PLAN ECONOMICO (EE.UU.)	PLAN PARA MEJICO	REPÚBLICA DOMINICANA PLAN	EE.UU. E INTERNACIONAL
Incluye:  Precio: <b>\$ 14.99</b> 400 Minutos líneas adicionales @ \$ 2 Minutos adicionales @ 5cents Bueno hasta 4lines mensuales	Incluye:  Precio: <b>\$ 34.99</b> 300 Minutos Minutos adicionales @ 12 cents Agregue una línea por solo \$ 2.5	Incluye:  Precio: <b>\$ 39.99</b> 300 Minutos Centavos adicionales Minutes@12.5 cents Agregar una línea por solo \$ 2.5	Incluye: <b>Precio para 1 ª línea: \$ 1</b> Agregue una línea: 50 cents Precios basados en la Destino 6cents para EE.UU. Las llamadas internacionales por solo 10 centavos los mejores precios garantizado Excelente para múltiples líneas

**We accept debit and credit card payments, institutional checks, bank deposits and paypal**

Sentel, Sentel  
 9550 S. Eastern Ave Ste 253  
 Las Vegas, NV 89123  
 Ph: 702-430-9445  
 Email: [sentel.nv@gmail.com](mailto:sentel.nv@gmail.com)  
 Website: [www.sentelinmatecall.com](http://www.sentelinmatecall.com)

**Note : Please do not send any inquiries by mail. Mail is only for orders and payments.**

# California's Lethal Injection Protocol Deemed Invalid by State Court

by Michael Brodheim

IN MAY 2013, A CALIFORNIA APPEALS court invalidated regulations promulgated by the California Department of Corrections and Rehabilitation (CDCR) regarding the manner in which the state executes condemned prisoners. The appellate court held that the CDCR had "substantially failed to comply" with the procedural requirements of the state's administrative rules; the decision prohibits the state from executing any prisoner by lethal injection until it properly adopts regulations pursuant to the Administrative Procedure Act (APA).

With 745 condemned prisoners as of June 2014, California has the nation's largest death row population. In December 2006, a federal court held that the state's three-drug lethal injection protocol constituted cruel and usual punishment. Despite their best efforts, CDCR officials have been unable to execute anyone since then.

Responding to the federal court ruling, in May 2007 the state revised its execution protocol. When challenged, however, that revision was found by a state court to constitute an "underground regulation" because it had not been promulgated pursuant to the APA.

The CDCR began the process of attempting to promulgate appropriate regulations in compliance with the APA in mid-2009. [See: *PLN*, Nov. 2009, p.28]. That process was completed in August 2010 when the CDCR adopted regulations now codified at §§ 3349, *et seq.* of title 15 of the California Code of Regulations.

The same month, condemned prisoner Mitchell Carlton Sims filed a complaint

seeking declaratory and injunctive relief. He argued that one of the three drugs the state planned to use for executions was unnecessary and would likely cause excruciating pain.

The trial court rejected that argument but accepted Sims' second argument – that the CDCR had substantially failed to comply with the procedural requirements of the APA when it adopted its execution protocol. In fact, the CDCR "admitted ... that it did not actually comply with many of the requirements of the APA...."

The Court of Appeal affirmed that decision, finding that the CDCR had 1) failed to articulate alternatives to the proposed three-drug execution protocol and 2) failed to explain why it rejected those alternatives, and in particular why the use of a single drug would not be as effective. See: *Sims v. Department of Corrections and Rehabilitation*, 216 Cal. App. 4th 1059 (Cal. App. 1st Dist. 2013).

In a book titled *Chief: The Quest for Justice in California*, published in November 2013, former California Supreme Court Chief Justice Ronald M. George questioned

whether the death penalty was fairly implemented due to geographical disparities.

"You could have the exact same crime, let's say a straightforward street robbery homicide, result in the seeking of the death penalty in one part of the state and not in the other, among various defendants with similar past histories and records," George wrote. "This, to me, raises some troubling issues. I'm not saying I find this necessarily rises to the level of a constitutional infirmity, but it may raise policy concerns about the manner in which the death penalty is administered in California."

In February 2014, former California governors Pete Wilson, Gray Davis and George Deukmejian expressed their support for a proposed ballot initiative that would hasten executions by curtailing lengthy state court appeals in death penalty cases.

A ballot initiative to end capital punishment in California narrowly lost in 2012. [See: *PLN*, May 2012, p.18]. ■

Additional sources: *Reuters*, *Los Angeles Times*, [www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org)

## Oregon Garnishment Exemption Protects Funds in Prisoners' Accounts

by Mark Wilson

A N OREGON JUDGE HAS HELD THAT A prosecutor improperly seized money from a prisoner's trust account to pay a court-ordered "compensatory fine."

In 2006, Norman Earl Schlunt was convicted of poisoning and suffocating his business partner and sentenced to life in prison. He also was ordered to pay a \$20,000 "compensatory fine" to the victim's daughters, Trenna Landers and Krisanna Clark.

In August 2012, prosecutors learned that Schlunt had \$1,222 in his prison trust account; they immediately garnished the entire sum for partial payment of the compensatory fine. Within days Schlunt had another \$225 deposited in his account, but that money was seized, too.

Schlunt challenged both garnishments, arguing that prosecutors had

improperly seized \$625. Relying on a \$400 personal property exemption under Oregon's garnishment law, Schlunt argued that prosecutors could not take \$400 of the initial \$1,222. Further, since the full amount of the second garnishment fell below the \$400 threshold, Schlunt argued that the entire \$225 was exempt from garnishment.

On March 1, 2013, Multnomah County Circuit Court Judge Jerome LaBarre held a hearing on the issue.

Prosecutors and attorneys for Landers and Clark argued that they were entitled to seize all of Schlunt's assets because Oregon crime victims have a right under the state constitution "to receive prompt restitution from the convicted criminal who caused the victim's loss or injury." They asserted that right trumps any statutory

### Pen Pals for Prisoners

Your ad on the Internet worldwide:

One year for \$9.95. Mail name &

address for FREE order form or online:

[www.PrisonerPal.com](http://www.PrisonerPal.com)

PO Box 19689

Houston, TX 77224

personal property exemptions provided by the garnishment laws. Besides, Schlunt doesn't need any money, they argued, because the prison system take cares of his basic needs.

Oregon Department of Justice (DOJ) attorneys appeared at the hearing as an unlikely ally in support of Schlunt's legal position. While they agreed that victims have a constitutional right to speedy "restitution," the DOJ attorneys noted that Schlunt was ordered to pay a compensatory fine – not restitution – as part of his sentence.

Prosecutors argued that the right to restitution encompasses compensatory fines, because "restitution and compensatory fines serve much the same purpose, both designed to pay victims for their losses."

Judge LaBarre didn't buy it. "Very simply ... words matter," he said. "The court is bound to follow the wording of the Oregon Constitution and the Oregon statutes." He therefore ordered prosecutors to reimburse \$625 of the \$1,447 seized from Schlunt's prison trust account. See: *State of Oregon v. Schlunt*, Multnomah County Circuit Court (OR), Case No. 06-03-31323.

Noting that she is a single mother with very little disposable income, Trena Landers vowed to appeal the ruling because it "bugged" her that Schlunt can buy snack foods from the prison commissary using the money in his account. "There are no

Doritos and ice cream in my kitchen," she observed.

Multnomah County District Attorney Rod Underhill announced he plans to use Schlunt's case to urge legislators to change the garnishment law. Prisoners should not be able to claim the \$400 exemption when the state seeks to collect restitution, compensatory fines, court fees and child support, he opined. But he also said the state shouldn't take all the money prisoners have, noting that the funds in their accounts help manage prisons because only well-behaved

prisoners earn the privilege of purchasing incentive items like televisions and MP3 players. Instead, Underhill said the state should be able to take half the funds in prisoners' accounts to satisfy court-ordered financial obligations.

Until the law is changed, however, based on Judge LaBarre's ruling the \$400 personal property exemption under Oregon's garnishment law applies to prisoners' trust accounts. ■

Source: *The Oregonian*

# FOR THE SCOOP

## Inmate Email News & Services

While all the other services out there offer separate packages for individual rates, "For The Scoop" gives it all to you for one low monthly rate!!! "For the Scoop" gives you Everything you've asked for; updates in the changes of the laws and bills that affect you, broken down in our segment "What this Really Means", Plus Weekend TV Schedule, Photo Service, Sports Lines, Entertainment, US and World News, Horoscope, Stocks and Business News, plus if there is something you are interested in, just send me an email and we will do all we can to keep you in the loop. [INFO@FORTHESCOOP.COM](mailto:INFO@FORTHESCOOP.COM)

"For the Scoop" on everything important to you, All you need to do is subscribe today our rate is \$5.00 per month, with \$20.00 minimum to open an account. Most searches are \$2.00. Custom searches are available. You may mail payment from your Inmate Trust Account or have a friend or a family member visit our website with a credit or debit card or mail a money order to our P.O. Box. [Info@forthescoop.com](mailto:Info@forthescoop.com) THAT IS RIGHT, Only \$5.00 a month for ALL OF OUR SERVICES FOR \$5.00 A MONTH

### FOR THE SCOOP

P.O. BOX 90594

SAN ANTONIO, TEXAS 78209

[INFO@FORTHESCOOP.COM](mailto:INFO@FORTHESCOOP.COM)

We offer around the clock service 24 hours a day 7 days a week. Requests are within 24 hours once an account is established and email set up. Institutional, RRC, and informational contact legal searches are strictly monitored. Business searches are general and as detailed as possible with contact information. Searches on individuals are prohibited. We follow BOP Rules and Regulations with our services.

Inmates across the country have questions and "For The Scoop" has answers!

Popular Inmate Searches: Federal Prisons/ Federal RRC's (Halfway Houses)/ Federal Court Houses/ Federal District Courts/ Federal District Clerks/ US Probation Offices State & County Court Houses/ Vital Statistics (birth,death records)/ Unclaimed Money State & County Clerks/ Child Support Offices/ State Probation & Parole Offices Department of Motor Vehicles/ Social Security Offices/ Employment Agencies Power of Attorney Forms/ Commissary Lists/ Ancestral Background

### WINNING HABEAS CORPUS & POST CONVICTION RELIEF

Revised 4th Ed. 2012

Main subject: Ineffective Assistance of Counsel-IAC"

Atty Kent Russel writes: "Simply the best source for a quick study on major subjects in the criminal process."

- <> A virtual law library in a book, major constructional issues
- <> 6th Amendment & IAC, Duty to investigate
- <> Forensics, Plea IAC, Jury Instructions
- <> §2254 & 2254 Procedure, Clearly established law

### POST COVICTION RELIEF FOR WASH. STATE-Personal Restraint Petition

The only book for Wash. State prisoners who seek collateral review by PRP or CrR 7.8 motion. Covers all aspects of preparing a PRP, time bar, facial invalidity, Plea bargain, sentencing, incl. case law & rules.

### ORDER: (price incl. tax, plus S&H)

- [ ] Winning Habeas Corpus... \$ 59.50
- [ ] Post Conviction Relief for Wash. \$ 49.50
- [ ] Both Books \$ 95.00

To: FAST LAW PUBLISHING

Box 577, Upland CA 91785 On-line [www.fastlaw.org](http://www.fastlaw.org)



# Ninth Circuit: Heck Allows § 1983 Parole Condition Challenges

by Mark Wilson

ON JULY 31, 2013, THE NINTH CIRCUIT Court of Appeals joined the Seventh Circuit in holding that the *Heck* doctrine does not bar all parole condition challenges brought under 42 U.S.C. § 1983.

California's Sexual Predator Punishment and Control Act of 2006 – also known as Jessica's Law or Proposition 83 – prohibits registered sex offenders from residing "within 2,000 feet of any public or private school, or park where children regularly gather." Parolees convicted of a "registerable sex offense" must also submit to GPS monitoring for the duration of their parole or sometimes for life.

In 2011, a California state court determined that the residency restriction imposed an unconstitutional "blanket" parole condition on all registered sex offenders. See: *In re Taylor*, 147 Cal. Rptr.3d 64 (Cal. App. 4<sup>th</sup> Dist. 2012). Blanket enforcement of the residency restriction was prohibited, but *Taylor* permitted a similar individualized ban.

In 2006, William Cecil Thornton was convicted of a theft charge in California and sentenced to 16 months in prison. He was released on a three-year parole term in June 2008. Due to a prior Tennessee sex offense, Thornton was required to submit to California's residency restriction and GPS monitoring as conditions of his parole.

Thornton filed suit in federal court under § 1983, challenging the residency restriction and GPS conditions; he sought damages and injunctive relief.

The district court dismissed the case for failure to state a claim pursuant to FRCP 12(b)(6). The court held that Thornton's claims were barred by Eleventh Amendment, absolute and qualified immunity, and that federal habeas corpus was his exclusive remedy under *Heck v. Humphrey*, 512 U.S. 477 (1994) [*PLN*, Sept. 1994, p.12].

The Ninth Circuit reversed, first holding that Thornton's official capacity injunctive relief claims were not barred by the Eleventh Amendment or absolute or qualified immunity.

The parole officers were entitled to absolute immunity on Thornton's damage claims for imposing unconstitutional parole conditions, the Court of Appeals held. However, qualified rather than absolute

immunity extended to his damage claim that parole officers enforced the conditions in "an unconstitutionally arbitrary or discriminatory manner."

Turning to the *Heck* doctrine, the Ninth Circuit noted that neither it nor the Supreme Court had previously "addressed whether, or in what circumstances," parole condition challenges may be brought under § 1983.

Observing that only the Seventh Circuit had addressed the issue, the appellate court followed the reasoning of *Drollinger v. Milligan*, 552 F.2d 1220 (7<sup>th</sup> Cir. 1977) and *Williams v. Wisconsin*, 336 F.3d 576 (7<sup>th</sup> Cir.

2003) in holding "that a state parolee may challenge a condition of parole under § 1983 if his or her claim, if successful, would neither result in speedier release from parole nor imply, either directly or indirectly, the invalidity of the criminal judgments underlying that parole term." As Thornton met those conditions, the case was reversed and remanded for further proceedings. See: *Thornton v. Brown*, 724 F.3d 1255 (9<sup>th</sup> Cir. 2013).

The appellate ruling was amended and republished on February 18, 2014, though the outcome remained the same. See: *Thornton v. Brown*, 2014 U.S. App. LEXIS 3037 (9<sup>th</sup> Cir. 2014). ■

## Second Circuit: RLUIPA Disallows Individual Capacity Suits

by David M. Reutter

THE SECOND CIRCUIT COURT OF APPEALS held in September 2013 that the Religious Land Use and Institutionalized Persons Act (RLUIPA) does not create a private right of action against state officials in their individual capacities.

Anthony Washington, incarcerated at New York's Woodbourne Correctional Facility, filed suit under 42 U.S.C. § 1983 in 2009, alleging that guards Paul Gonyea, Tammi Chaboty and Keith Granger had retaliated against him for exercising his First Amendment rights to free speech and free exercise of religion. He also raised RLUIPA and due process claims.

Washington's RLUIPA claim alleged the defendants substantially burdened his free exercise rights. The defendants successfully moved to dismiss that claim because, they argued, Washington failed to plead they had placed "a substantial burden – or indeed, any burden – on his religious practice."

On appeal, the Second Circuit cited precedent holding that sovereign immunity forecloses the availability of monetary damages as a remedy against states and state actors in their official capacities under RLUIPA. See: *Sossamon v. Texas*, 131 S.Ct. 1651 (2011) [*PLN*, Aug. 2011, p.22]. Thus, he could not sustain an official capacity claim.

Washington also sued the defendants in their individual capacities. The appellate court adopted the reasoning of its "sister circuits in concluding that RLUIPA does not provide a cause of action against state officials in their individual capacities because the legislation was enacted pursuant to Congress' spending power ... which allows the imposition of conditions, such as individual liability, only on those parties actually receiving the state funds."

Individual prison employees are not "recipients" of federal funding; as such, the RLUIPA claim was properly dismissed – although the Court of Appeals declined to decide whether RLUIPA permits individual-capacity suits under the commerce clause. See: *Washington v. Gonyea*, 731 F.3d 143 (2d Cir. 2013).

Washington's due process claim was addressed in a separate, unpublished ruling in which the appellate court affirmed in part and reversed in part the district court's dismissal of the First Amendment retaliation claims, finding that "a liberal reading of the complaint gives rise to a plausible inference that Chaboty and Granger were involved either directly or indirectly, and Washington has therefore adequately pled a violation of his First Amendment rights on that basis." See: *Washington v. Gonyea*, 538 Fed. Appx. 23 (2d Cir. 2013). ■

# WELCOME TO KRASNYA BABES & KRASNYA STUDS WORLD

TENS OF THOUSANDS OF THE HOTTEST AND MOST SCANDALOUS BABES&DUDES FOUND ON THE PLANET.  
EACH CATALOG PAGE HAS 120 BEAUTIFUL GIRLS OR BOYS POSING JUST FOR YOU!  
ORDER ONE CATALOG PAGE FOR ONLY \$4.50 OR FOR 10 U.S. FOREVER STAMPS WITH AN SASE ENCLOSED.  
WE WILL SEND YOU VOLUME ONE. EACH ADDITIONAL VOLUME THE SAME PRICE!

**HELP US TO HELP YOU!**

WE ARE MORE THAN HAPPY TO ANSWER E-MAIL INQUIRES HOWEVER, DUE TO MAILING COST AT \$0.46 CENTS A LETTER, PLEASE ENCLOSE AN SASE WITH YOUR QUESTIONS, OTHERWISE NO REPLIES!

**WHAT ABOUT OUR PRICES AND POLICIES**

COLOR PRINTS ON 4x6 GLOSSY PHOTO PAPER AS LOW AS \$0.35 CENTS PER PRINT ON ORDERS OVER 500 SHIPPED ACCORDING TO POLICY: 25 PICTURES PER ENVELOPE EVERY 24 HOURS. S&H \$2.00 PER ENVELOPE.

**METHOD OF PAYMENT/CONTACT INFORMATION**

U.S. POSTAL SERVICE MONEY ORDERS-STATE & FEDERAL CORRECTIONAL INSTITUTIONAL CHECKS

**PAYABLE ONLY TO: KRASNYA L.L.C.**

EQUATION FOR FIRST CLASS U.S. FOREVER STAMPS

BRAND NEW FLAT BOOK FOR ALL ORDERS AT THE RATE OF \$6.00 PER FLAT BOOK.

WE RESPOND TO OUR CLIENTS NEEDS AND TRY TO HELP THE BEST WE CAN.

**OUR SEASONAL SPECIALS MEAN A KICKOFF OF SAVINGS!**

**COLOR CATALOG DISCOUNT SALE**  
ONE COLOR CATALOG OF 120 BABES  
IN CLASSIC OR NUDE LINES \$4.50

PLEASE INCLUDE

A SELF-ADDRESSED STAMPED  
(2-FIRST CLASS STAMPS) ENVELOPE.

QUANTITY BUYS:

5-14 CATALOGS =10% OFF OUR REGULAR PRICE  
15 CATALOGS =15% OFF OUR REGULAR PRICE  
20 CATALOGS =20% OFF OUR REGULAR PRICE  
25 CATALOGS =25% OFF OUR REGULAR PRICE  
30 CATALOGS =30% OFF OUR REGULAR PRICE  
35 CATALOGS =35% OFF OUR REGULAR PRICE  
40 CATALOGS =40% OFF OUR REGULAR PRICE  
45 CATALOGS =45% OFF OUR REGULAR PRICE  
50 CATALOGS =50% OFF OUR REGULAR PRICE  
BE SURE TO SPECIFY CLASSIC OR NUDE BABES!

150 VOL. OF KRASNYA BABES CLASSIC LINE  
150 VOLUMES OF KRASNYA BABES NUDE LINE

**\$24.95 S&H FREE**  
**FOR GRAB BAG OF**  
**50 PHOTOS**  
**FROM ALL OUR CATALOGS**  
**SPECIFY RACE AND MAIN**  
**AREA OF YOUR INTERESTS**  
**WE WILL PICK SELECTION**  
**FOR YOU**  
**BONUS 1 COLOR CATALOG**  
**PAGE OF 120 BABES**

**LOOSE STAMPS FOR LOOSE BABES**

KRASNYA LOOSE STAMP GRAB BAG SPECIAL

10 LOOSE BABES.....30 STAMPS  
25 LOOSE BABES.....75 STAMPS  
50 LOOSE BABES.....150 STAMPS  
ALL STAMPS MUST BE 1ST CLASS STAMPS  
IN LIKE NEW CONDITION!

**SPECIFY NUDE OR BOP-SAFE (NO VISIBLE NUDITY)**  
**WE WILL PICK SELECTION FOR YOU**

**KRASNYA BABES HAS SPRUNG SALE!**

**FREE SAMPLE CATALOG FROM KRASNYA!**  
**120 BABES IN EACH CATALOG**  
**ENCLOSE ONE SASE WITH TWO FIRST**  
**CLASS STAMPS! 1 CAT PER CUSTOMER**  
**PLEASE SPECIFY MALE OR FEMALE BABES**  
**NUDE OR BOP-FRIENDLY**

**3 BRAND NEW FLAT BOOKS OF FOREVER**  
**STAMPS FOR GRAB BAG OF 45 PHOTOS**  
**FROM ALL OUR CATALOGS. SPECIFY RACE**  
**AND MAIN AREA OF YOUR INTERESTS**  
**WE WILL PICK SELECTION FOR YOU**  
**BONUS 1 COLOR CATALOG OF 120 BABES**  
**PLEASE INCLUDE 6 FOREVER STAMPS**  
**WITH YOUR ORDER FOR S&H**

KRASNYA L.L.C.

P.O. BOX 32082

BALTIMORE, MD 21282

EMAIL AND CORRLINKS REQUESTS ACCEPTED AT:  
KRASNYABABES@HOTMAIL.COM

WE'D LIKE TO START THE HOLIDAYS RIGHT THIS YEAR!  
THE WAY TO DO THAT IS BY SENDING YOU INCREDIBLE VALUES  
IT'S ONE THING TO TALK THE TALK, ANOTHER TO WALK THE TALK

**50 GREAT BABES 0.50 CENTS EACH!—\$25.00**  
**100 GREAT BABES 0.45 CENTS EACH!—\$45.00**  
**200 GREAT BABES 0.40 CENTS EACH!—\$80.00**  
**300 GREAT BABES 0.40 CENTS EACH!—\$120.00**  
**500 GREAT BABES 0.35 CENTS EACH!—\$175.00**

STANDARD TERMS & CONDITIONS APPLY – \$2.00  
PER ENVELOPE (25 PHOTO) FOR SHIPPING AND HANDLING!

**WAIT!**

**YOU SAY YOU DON'T HAVE ENOUGH BABE CHOICES**  
**OR CATALOGS? YOU NEED CATALOGS?**  
**PREPAY YOUR ORDER AND WE WILL SEND YOU**  
**FREE COLOR CATALOGS!**  
**GREAT DEAL, BUT HOW MANY CATALOGS?**

**FOR EVERY 100 BABES WE'LL SEND YOU**  
**240 BABES TO CHOOSE FROM!**

**ORDER**

**50 BABES.....ONE SINGLE CATALOG**  
**100 BABES.....ONE DOUBLE CATALOG**  
**200 BABES.....TWO DOUBLE CATALOGS**  
**300 BABES.....THREE DOUBLE CATALOGS**  
**500 BABES.....FIVE DOUBLE CATALOGS**

KRASNYA IS PROUD TO INTRODUCE AT FANTASTIC INTRODUCTORY PRICES  
THE CONNOISSEUR'S COUTURE "CACHE TWO-FIVE COLLECTION"  
OF INTERNATIONAL ADULT FILM STARS  
TWELVE PACKAGES OF 25 NUDE AND NON-NUDE POSES,  
AVAILABLE ONLY IN OUR "CACHE TWO-FIVE" COLLECTION.

"CACHE TWO-FIVE"

"CACHE TWO-FIVE" IS AVAILABLE IN TWELVE (12) SPECIALLY PRICED PACKAGES  
OF 25 POSES IN NUDE AND NON-NUDE POSES.

PLEASE SPECIFY ON YOUR ORDERS IF YOU WANT NUDE OR NON-NUDE PACKAGES  
AND WHAT COLLECTION NUMBER YOU'D LIKE.

COLLECTIONS ARE NUMBERED 01-12 FOR EXAMPLE ON YOUR ORDER YOU'D WRITE:

\*\*\*NUDE CACHE TWO-FIVE PACKAGE 01 & 02\*\*\*

REMEMBER THERE ARE TWELVE (12) COMPLETELY DIFFERENT PACKAGES OF 25 BABES,  
THERE ARE NO DUPLICATES IN ANY OF THE 12 PACKAGES.

600 BEGUILING BEAUTIES, ALL BRAND NEW ADDITIONS TO OUR LINE AND AVAILABLE ONLY  
IN OUR CACHE "TWO-FIVE" PACKAGES! 300 NUDES AND 300 NON-NUDE BEAUTIES

CAPTURE YOUR OWN COLLECTION OF KRASNYA'S "CACHE TWO-FIVE" SELECTIONS IN  
INDIVIDUALIZED PACKAGING OF 25 RARE AND EXQUISITE BREATH-TAKING BEAUTIES.

THE CONNOISSEUR'S COUTURE COLLECTION OF "CACHE TWO-FIVE" BRINGS YOU  
25 BEAUTIES IN EACH "CACHE TWO-FIVE" PACKAGE FOR ONLY \$12.95 PER PACKAGE

LIMITED TIME SPECIAL \*\*\*\*\* \$59.95\*\*\*\*\*

PLUS S&H FOR 6 "CACHE TWO-FIVE" PACKAGES OF THE NUDE OR NON-NUDE COLLECTIONS  
150 BEAUTIES

IMAGINE 150 OF THESE EXCITING AND EXQUISITE BEAUTIES

FOR A RIDICULOUSLY LOW PRICE OF

\*\*\*\*\*\$59.95\*\*\*\*\* PLUS \$12.00 SHIPPING AND HANDLING CHARGE.

ADD \$2.00 FOR SHIPPING AND HANDLING PER "CACHE TWO-FIVE" PACKAGE ORDERED.

YOU MUST SPECIFY NUDE OR NON-NUDE PACKAGES

IF NOT SPECIFIED NON-NUDE WILL BE SHIPPED AUTOMATICALLY

ALL OF OUR NORMAL POLICIES APPLY

**FOR KRASNYA CLIENTS WHO WORK THE YARDS;**  
**HAVE WE GOT A GREAT OPPORTUNITY FOR YOU...GRAB BAG**  
**MR. HUSTLE GRAB BAG BARGAIN DAYS**

**ONLY \$0.25 CENTS PER BABE**

**5 GRAB BAG MINIMUM PURCHASE REQUIRED**

**\$2.00 SHIPPING AND HANDLING PER BAG**

**25 AWESOME BABES PER BAG AT ONLY \$6.25 PER BAG**

**YOU MUST BUY AT LEAST 5 GRAB BAGS OR 50 GRAB BAGS.**

**THIS\*\*\*GRAB BAG BARGAIN\*\*\* IS NOT GOING TO BE OFFERED**

**AGAIN THIS YEAR. SO STOCK UP NOW!**

**AS YOU KNOW YOU GET AN ARRAY OF 25 GORGEOUS BABES**  
**YOU CAN ONLY CHOOSE EITHER MALES OR FEMALES,**  
**ALL NUDES OR BOP SAFE...THE INDIVIDUAL SELECTIONS COME**  
**FROM OUR BEST CATALOGS!!!**

**YOU MAY WANT TO SIT DOWN FOR THIS BONUS BARGAIN!**

**OUR BABES CATALOGS SPECIAL OF THE DECADE**

— 5 COLOR CATALOGS FOR \$6.00 —

— 10 COLOR CATALOGS FOR \$12.00 —

— 15 COLOR CATALOGS FOR \$18.00 —

— 20 COLOR CATALOGS FOR \$24.00 —

**OUR CATALOGS SPECIAL AVAILABLE WHEN YOU PURCHASE**  
**THE 5 GRAB BAG MINIMUM!**

**THIS PRICE INCLUDES FREE SHIPPING ON THE CATALOGS**  
**BECAUSE OF SHIPPING TERMS ALL CATALOGS SOLD IN**  
**MULTIPLES OF 5 FOR \$6.00 ONLY.**

**YOU CHOOSE EITHER MALE OR FEMALE CATALOGS**  
**AND IF YOU WANT NUDE OR BOP SAFE!!**

# California: Lack of Insight Cannot be Inferred when Prisoner Accepts Responsibility for Crime and Expresses Genuine Remorse

by Michael Brodheim

IN THE WAKE OF THE CALIFORNIA Supreme Court's ruling in *In Re Shaputis*, 53 Cal. 4th 192 (Cal. 2011) [*PLN*, Aug. 2012, p.16], lower courts in California continue to struggle with the issue of whether a denial of parole predicated on "lack of insight" is supported, in any given case, by the requisite "some evidence" of the prisoner's current dangerousness.

In April 2013, the Court of Appeal, First Appellate District reiterated its previously stated view that "an inmate's lack of insight into the causes of his criminal conduct cannot rationally be inferred from his inability to remember the conduct where ... he acknowledges his factual, legal and moral responsibility for the criminal act, and has expressed genuine remorse."

The appellate court characterized the view of the parole board that "an inmate unable to recollect commission of his offense cannot understand the factors that caused him to commit it" as, variously, "irrational," "purely speculative" and "guesswork."

The issue arose in the case of James Charles Stonerod, a Native American who, in 1986, while extremely intoxicated, murdered the 17-year-old son of his long-time girlfriend and also tried to kill her. Convicted of second-degree murder, Stonerod was sentenced to a term of 15 years to life, consecutive to an 11-year term for attempted murder and weapons enhancements. Believing he deserved to be punished, he did not appeal his convictions.

Stonerod became eligible for parole in 2002. He was denied parole at that time, and again in 2006. The parole board told him to 1) stay discipline free; 2) get self-help; 3) earn reports of positive behavior, known as "chronos"; 4) learn a trade; 5) get therapy; and 6) obtain a GED. Another parole hearing was scheduled for 2010.

Stonerod complied with all of the parole board's requirements except for getting his GED – a deficiency which the board ignored at the 2010 hearing. But his substantial compliance was of little use, as the parole board instead fixated, for the first time, on his inability to fully recall committing his offense.

Noting that Stonerod had a history of

alcoholic blackouts and that nothing in the record called into question the authenticity of either his lack of recall or his remorse, the court rejected the parole board's unsupported theory effectively equating lack of recall with "lack of insight."

The appellate court summarized its lengthy decision by stating, "A factually indefinable deficiency in perception and understanding that involves a significant aspect of an inmate's criminal conduct, and has some rational tendency to show he poses an unreasonable risk of danger, may show an inmate unsuitable for parole. But it is not enough to establish that the insight

is deficient in some specific way; there must additionally be some connection between the deficiency relied upon and the conclusion of current dangerousness."

The Court of Appeal, with one judge dissenting, found that "The requisite connection is not present in this case. [Stonerod's] inability to recall commission of the ... offense does not, ipso facto, indicate he constitutes a threat to public safety."

Accordingly, the case was remanded to the parole board for a new hearing. See: *In re Stonerod*, 215 Cal. App. 4th 596, 155 Cal. Rptr. 3d 639 (Cal. App. 1st Dist. 2013), review denied. ■

## Washington Appellate Court Addresses Right to Public Hearings in Civil Cases

by Mark Wilson

ON SEPTEMBER 19, 2013, THE COURT of Appeals of Washington held that the state constitution creates a right of public access to the courts shared by civil litigants and the general public. It also held, however, that a litigant waives his right by failing to assert it and lacks standing to assert the right on behalf of the general public.

When Rolando Reyes was incarcerated for burglary in 2004, a Washington Assistant Attorney General (AAG) petitioned to commit him to the Special Commitment Center (SCC) to await trial as a sexually violent predator (SVP). While at the SCC, Reyes was twice convicted of custodial assault with sexual motivation. The SVP petition was dismissed when Reyes was sentenced to another 36 months in prison for the custodial assaults.

In 2008, the AAG re-filed the civil commitment petition and Reyes moved to dismiss. The AAG appeared telephonically and "the judge, two attorneys representing Mr. Reyes ... and a court reporter were present in chambers for the motion hearing."

The court denied the motion and a bench trial was held nine days later. The judge found that Reyes "was a sexually violent predator and ordered him committed to the SCC."

On appeal, Reyes challenged the sufficiency of the evidence presented at the bench trial and argued that "the 'closure' of the courtroom at the pretrial hearing on his motion to dismiss" violated article I, § 10 of the Washington Constitution, which requires that "justice in all cases shall be administered openly."

In the latter regard, after an extensive analysis of the text and history of § 10, the Court of Appeals concluded "that the requirement that justice be openly administered includes, at a minimum, the long recognized right of the public to attend court proceedings. The provision is not expressed as an individual right, but as a command to the judiciary ... § 10 creates a right held by all Washingtonians."

Further, "When a dispositive motion is argued to the court in a civil case, it should be heard in the courtroom or other facility open to the public," the appellate court wrote. "Any waiver of the public forum will have to take place in the courtroom in accordance with" factors set forth in *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (Wash. 1982).

Although Reyes' motion to dismiss should not have been heard in chambers, the Court of Appeals found that he had

waived his \$ 10 public hearing argument by failing to assert it at the time. The Court added that a "litigant who fails to assert the right to a public hearing must show how he was prejudiced by the closure" of the

courtroom to the public.

Discerning "no valid interest in allowing a litigant to assert a right for others that he declined to assert for himself," the appellate court also concluded that Reyes

lacked standing to argue a \$ 10 violation on behalf of the general public. The lower court's order was therefore affirmed. See: *In re Reyes*, 176 Wn. App. 821, 315 P.3d 532 (Wash. Ct. App. 2013). ▀

## Arkansas Jail Prisoner Can Proceed on Failure to Protect Claim Against Guard

by David M. Reutter

**T**HE EIGHTH CIRCUIT COURT OF APPEALS has upheld the denial of summary judgment to a guard who was aware of a threat of harm to a pretrial detainee, but reversed as to a jail supervisor because the only evidence against him was inadmissible hearsay evidence.

Arkansas pretrial detainee Chariell Ali Glaze filed a civil rights action against jail guard Demontrel L. Childs and Lt. Gary Andrews for failing to protect him at the Faulkner County Detention Center.

Glaze was removed from his cell on March 5, 2010 to be transferred to administrative segregation for reasons that are unclear in the record. After he was moved, fellow detainee Bradley Boyce told Childs, "if you bring [Glaze] back in here, there are certain inmates in here talking about hurting him." According to Glaze, Childs said he would "talk to the lieutenant and see what can be done."

Later, Childs told Boyce that he "talked to the lieutenant and the lieutenant said he couldn't do anything about it." Boyce testified that "knowing that they have done

moves like that before and moved people around on those grounds, either [Childs] is lying or he didn't give the lieutenant all of the information." That evening, after Glaze was returned to his cell, he was attacked by three other prisoners. He required six stitches when treated for his injuries at a hospital, and subsequently filed suit.

The district court denied summary judgment motions filed by Childs and Andrews, who then appealed.

The Eighth Circuit held the denial of summary judgment to Childs was appropriate, because his comment about speaking to a supervisor about the matter indicated he appreciated the danger to Glaze. The appellate court rejected Childs' argument that Boyce's failure to identify the would-be assailants allowed him to escape liability.

A jury could find that Childs failed to inform the lieutenant of the danger to Glaze because he did not want to bother the lieutenant or didn't care what happened to Glaze. "The evidence at this stage does not foreclose either possibility," the Court of Appeals wrote.

However, the only evidence against Lt.

Andrews consisted of statements that Boyce claimed Childs had made. The Eighth Circuit held those statements were inadmissible hearsay, and absent any evidence that Andrews was actually aware of a danger to Glaze, he was entitled to summary judgment.

The district court's order was therefore affirmed in part and reversed in part to enter judgment in favor of Andrews. This case remains pending on remand. See: *Glaze v. Byrd*, 721 F.3d 528 (8th Cir. 2013). ▀

### WISDOM IS THE KEY TO SUCCESS Get Wise; Get a SMITH'S GUIDE™

#### SMITH'S GUIDE to Executive Clemency for State and Federal Prisoners

For those who have exhausted all legal remedies or have sentences that are too long to serve, this book lays out every aspect of the clemency process. [288 pages]

#### SMITH'S GUIDE to Chapter 7 Bankruptcy for Prisoners (June 2014)

Get immediate freedom from liens against offender account by filing chapter 7 bankruptcy. Includes required bankruptcy forms and detailed filing instructions.

\$24.95 + \$6.95 shipping/handling (in CA, include additional sales tax of \$2.18) for each book. Please specify book(s) ordered. Sent via USPS media mail. Money orders, personal checks or institutional checks ONLY. Send name, address and DOC/BOP number, with payment of \$31.90 (in CA, \$34.08) per book, payable to Roberts Company:

Roberts Company, 15412 Electronic Lane #101  
Huntington Beach, CA 92649  
Also available on Amazon.com

Want another chance?


**inPENPALS®**  
where meaningful relationships begin



Write to:  
inpenpals  
P.O. Box 18245  
San Antonio, TX 78218

www.inpenpals.com  
Tambien esta disponible en español

**Know What's Good On TV With Channel Guide magazine**



- Daily schedules for **over 120 channels**
- Weekly **TV best bets**
- **Over 3,000 movie listings**
- **TV Crossword, Sudoku, celebrity interviews** and more
- **1 Year (12 issues) for just \$30**

**Mail your \$30 check or money order payable to Channel Guide Magazine to:**  
Channel Guide Magazine AAGPLNC  
PO Box 8501, Big Sandy, TX 75755-8501  
**Include your name, ID number and address.**  
**Or call 866-323-9385 or 903-636-1107**



# 5.85 Million People Disenfranchised in Supposedly Democratic America

by David M. Reutter

**T**HE UNITED STATES IS BILLED AS THE world's largest and greatest democracy. However, it is also "one of the world's strictest nations when it comes to denying the right to vote to citizens convicted of crimes," according to The Sentencing Project, a Washington, D.C.-based non-profit that promotes sentencing reforms, advocates for alternatives to incarceration and criticizes racial disparities in our criminal justice system.

The Sentencing Project reports that 5.85 million Americans are unable to vote due to state felon disenfranchisement laws.

Only Maine and Vermont have no disenfranchisement statutes, allowing even prisoners to vote while incarcerated. Prisoners cannot vote in the other 48 states, while 31 states deny voting rights to probationers and 35 disenfranchise parolees. Jail detainees who have not been convicted of a felony can still vote in most cases.

Twelve states have the most extreme sanctions and deny voting rights to some or all ex-felons who have successfully completed their prison, parole or probation terms. Those states include Alabama, Arizona, Delaware, Florida, Iowa, Kentucky, Mississippi, Nebraska, Nevada, Tennessee, Virginia and Wyoming.

While most states have a process for former felons to regain their right to vote, it can be onerous and in some cases expensive. In Tennessee, for example, ex-felons must pay all restitution and court costs owed plus be current on any child support payments before they are allowed to vote.

Public opinion research has shown that a majority of Americans favor probationers and parolees, as well as those who have completed their sentences, regaining their voting rights. Yet The Sentencing Project has reported a dramatic increase in the rate of disenfranchisement since 1980.

"At that time, far more of the nation had disenfranchisement rates below .5% and no state disenfranchised more than 5% of its adult citizens.... disenfranchisement rates in 2010 varied from less than .5% in Massachusetts, New Hampshire, North Dakota, and Utah (and zero in Maine and Vermont) to more than 7% in Alabama, Florida, Kentucky, Mississippi, Tennessee and Virginia."

Although it has the third largest prison system in the nation, Florida tops the list for disenfranchisement. With over 1.5 million people prohibited from voting, Florida disenfranchises 10.42% of its population. By contrast, Texas and California, which have the largest state prison systems, only disenfranchise 2.91% and 1% of their citizens, respectively.

The rate of disenfranchisement varies "tremendously" across racial and ethnic groups, according to The Sentencing Project. This is problematic for Hispanics but has been devastating for African-Americans. In 1980, Arizona and Iowa disenfranchised 10% of their African American populations and several southern states exceeded 5%. By 2014, Florida, Kentucky and Virginia disenfranchised 20% or more of black adults. Overall, around 7.6% of black adults are disenfranchised nationwide – or one in every 13.

This is not surprising, as many states' disenfranchisement laws were enacted in the post-Reconstruction period following the Civil War, as a way to deny voting rights to freed slaves. In some cases, such laws were specifically designed to disenfranchise blacks who were thought to be more likely to commit certain crimes. "While it is debatable whether felony disenfranchisement laws today are intended to reduce the political clout of communities of color, this is their undeniable effect," The Sentencing Project noted.

The number of people who are disenfranchised has steadily grown in recent years. This contrasts with a decline between 1960 and 1976 as states expanded voting rights during the civil rights era. Many states have scaled back their disenfranchisement laws since the 1970s.

For example, Maryland and Washington eliminated disenfranchisement after prisoners had completed their sentences or terms of community supervision. Rhode Island now only restricts the voting rights of prisoners as opposed to all felons including those on probation and parole. Nebraska instituted automatic restoration of voting rights after a two-year waiting period following completion of a prison sentence.

However, as the prison population in the U.S. grew exponentially in the 1980s

and 1990s, there was a corresponding increase in the number of people who lost their voting rights.

The scope, eligibility and reporting practices of states' methods for restoring the voting rights of disenfranchised felons vary greatly. The Sentencing Project made a "rough estimate" of states' re-enfranchisement rates, finding felons and former felons had their rights restored "from less than 1% of all ex-felons in all states to over 16% in Delaware."

Of the people who are disenfranchised, 25% are in prison or jail. "The remaining 75% are living in their communities, having fully completed their sentences or remaining supervised while on probation or parole." This means that "over 4 million of the adults who live, work, and pay taxes in their communities are banned from voting."

That is enough votes to change the outcome of state, local and national elections. The Sentencing Project noted that "one study found that disenfranchisement policies likely affected the results of seven U.S. Senate races from 1970 to 1998 as well as the hotly contested 2000 Bush-Gore presidential election."

"Denying the right to vote to an entire class of citizens is deeply problematic to a democratic society and counterproductive to effective reentry," The Sentencing Project concluded.

Other democracies do not impose unilateral restrictions on the voting rights of citizens who commit crimes. In 2005, the European Court of Human Rights held "that a blanket ban on voting from prison violates the European Convention on Human Rights, which guarantees the right to free and fair elections." Similarly, courts in South Africa, Israel and Canada have ruled against restrictions on voting rights solely due to criminal convictions.

Not so in the United States, the land of the not-so-free with liberty, justice and voting rights for some but not all. ■

Sources: "State-Level Estimates of Felon Disenfranchisement in the United States, 2010," *The Sentencing Project* (July 2012); "Felony Disenfranchisement: A Primer," *The Sentencing Project* (updated April 2014)



Stay in touch with a good Magazine!

Get 5 Full One Year Subscriptions - **ONLY \$20!**

+ \$3.99 p/h  
"BEST DEAL ON THE POUND!"

Check your **5** magazines  
and underline three backup choices (in case of unavailability)

- |                                                             |                                                            |                                                        |
|-------------------------------------------------------------|------------------------------------------------------------|--------------------------------------------------------|
| <input type="checkbox"/> 4 WHEEL DRIVE & SPORT UTILITY (12) | <input type="checkbox"/> FLEX (12)                         | <input type="checkbox"/> PLANE & PILOT (12) NR*        |
| <input type="checkbox"/> ALLURE (12)                        | <input type="checkbox"/> FLORIDA SPORT FISHING (6)         | <input type="checkbox"/> POPULAR PHOTOGRAPHY (12)      |
| <input type="checkbox"/> AMERICAN PHOTO (6)                 | <input type="checkbox"/> FLYING (12)                       | <input type="checkbox"/> POPULAR SCIENCE (12)          |
| <input type="checkbox"/> ARTHRITIS TODAY (6)                | <input type="checkbox"/> FOUR WHEEL & OFF ROAD (12)        | <input type="checkbox"/> PREDATOR EXTREME (6)          |
| <input type="checkbox"/> AUTOMOBILE (12)                    | <input type="checkbox"/> FOUR WHEELER (12)                 | <input type="checkbox"/> PREVENTION (12)               |
| <input type="checkbox"/> BACKPACKER (9)                     | <input type="checkbox"/> FREESKIER (6)                     | <input type="checkbox"/> RED BULLETIN MAGAZINE (12)    |
| <input type="checkbox"/> BETTER HOMES & GARDENS (12)        | <input type="checkbox"/> GLAMOUR (12)                      | <input type="checkbox"/> REDBOOK (12)                  |
| <input type="checkbox"/> BICYCLING (11)                     | <input type="checkbox"/> GOLF DIGEST (12)                  | <input type="checkbox"/> ROAD & TRACK (10)             |
| <input type="checkbox"/> BLACK ENTERPRISE (12)              | <input type="checkbox"/> GOLF TIPS (7)                     | <input type="checkbox"/> SAVEUR (9)                    |
| <input type="checkbox"/> BOATING (10)                       | <input type="checkbox"/> GOLFWEEK (40)                     | <input type="checkbox"/> PARENT & CHILD (8)            |
| <input type="checkbox"/> BON APPETIT (12)                   | <input type="checkbox"/> HARPERS BAZAAR (10)               | <input type="checkbox"/> SELF (12)                     |
| <input type="checkbox"/> BOWHUNT AMERICA (6)                | <input type="checkbox"/> HOT BIKE (12)                     | <input type="checkbox"/> SEVENTEEN (10)                |
| <input type="checkbox"/> BOWHUNTING WORLD (9)               | <input type="checkbox"/> HOT ROD (12)                      | <input type="checkbox"/> SHAPE (12)                    |
| <input type="checkbox"/> BRIDAL GUIDE (6)                   | <input type="checkbox"/> HOUR DETROIT (12)                 | <input type="checkbox"/> SIEMPRE MUJER (6)             |
| <input type="checkbox"/> CABELA'S OUTFITTER JOURNAL (6)     | <input type="checkbox"/> HOUSE BEAUTIFUL (10)              | <input type="checkbox"/> SKI MAGAZINE (6)              |
| <input type="checkbox"/> CAR & DRIVER (12)                  | <input type="checkbox"/> INC (12)                          | <input type="checkbox"/> SLAM (10)                     |
| <input type="checkbox"/> CAR CRAFT (12)                     | <input type="checkbox"/> INSTRUCTOR K - 8 (6)              | <input type="checkbox"/> SNOWBOARD (4)                 |
| <input type="checkbox"/> CBS WATCH! MAGAZINE (6)            | <input type="checkbox"/> ISLANDS MAGAZINE (8)              | <input type="checkbox"/> SNOWBOARDER (6)               |
| <input type="checkbox"/> CHARISMA (12)                      | <input type="checkbox"/> JET (20)                          | <input type="checkbox"/> SPORT RIDER (10)              |
| <input type="checkbox"/> CHEVY HIGH PERFORMANCE (12)        | <input type="checkbox"/> LADIES HOME JOURNAL (10)          | <input type="checkbox"/> SUPER CHEVY (12)              |
| <input type="checkbox"/> CIRCLE TRACK (12)                  | <input type="checkbox"/> LATINA (10)                       | <input type="checkbox"/> SURFER (12)                   |
| <input type="checkbox"/> COMPLEX MAGAZINE (6)               | <input type="checkbox"/> LOG HOME LIVING (9)               | <input type="checkbox"/> TAMPA BAY MAGAZINE (6)        |
| <input type="checkbox"/> CONDE NAST TRAVELER (12)           | <input type="checkbox"/> LUCKY (10)                        | <input type="checkbox"/> TEEN VOGUE (10)               |
| <input type="checkbox"/> CRUISING WORLD (12)                | <input type="checkbox"/> MARIE CLAIRE (12)                 | <input type="checkbox"/> TENNIS (6)                    |
| <input type="checkbox"/> CYCLE WORLD (12)                   | <input type="checkbox"/> MEN'S FITNESS (10)                | <input type="checkbox"/> THE ATLANTIC MONTHLY (10)     |
| <input type="checkbox"/> DETAILS - FASHION (10)             | <input type="checkbox"/> MEN'S JOURNAL (12)                | <input type="checkbox"/> TIMBER HOME LIVING (6)        |
| <input type="checkbox"/> DETROIT HOME (6)                   | <input type="checkbox"/> MIDWEST LIVING (6)                | <input type="checkbox"/> TRANSWORLD MOTOCROSS (12)     |
| <input type="checkbox"/> DIGITAL PHOTO (7)                  | <input type="checkbox"/> MINISTRY TODAY (6)                | <input type="checkbox"/> TRANSWORLD SKATEBOARDING (12) |
| <input type="checkbox"/> DIRT RIDER (12)                    | <input type="checkbox"/> MORE (10)                         | <input type="checkbox"/> TRANSWORLD SNOWBOARDING (8)   |
| <input type="checkbox"/> EBONY (11)                         | <input type="checkbox"/> MOTOR TREND (12)                  | <input type="checkbox"/> TRUCKIN (13)                  |
| <input type="checkbox"/> ELLE DECOR (10)                    | <input type="checkbox"/> MOTORCYCLIST (12)                 | <input type="checkbox"/> UPTOWN (6)                    |
| <input type="checkbox"/> ENTREPRENEUR (12)                  | <input type="checkbox"/> MUSCLE & FITNESS (12)             | <input type="checkbox"/> UPTOWN MAGAZINE (6)           |
| <input type="checkbox"/> ESPN MAGAZINE (26)                 | <input type="checkbox"/> MUSCLE MUSTANGS & FAST FORDS (12) | <input type="checkbox"/> W MAGAZINE (10)               |
| <input type="checkbox"/> ESQUIRE (11)                       | <input type="checkbox"/> NYLON GUYS (6)                    | <input type="checkbox"/> WATERFOWL & RETRIEVER (2)     |
| <input type="checkbox"/> EVERY DAY WITH RACHAEL RAY (10)    | <input type="checkbox"/> NYLON MAGAZINE (10)               | <input type="checkbox"/> WEIGHT WATCHERS (6)           |
| <input type="checkbox"/> FAMILY CIRCLE (12)                 | <input type="checkbox"/> OLD HOUSE JOURNAL (6)             | <input type="checkbox"/> WHITETAIL JOURNAL (6)         |
| <input type="checkbox"/> FAMILY FUN (10)                    | <input type="checkbox"/> OUTDOOR LIFE (12)                 | <input type="checkbox"/> WIRED (12)                    |
| <input type="checkbox"/> FAST COMPANY (10)                  | <input type="checkbox"/> OUTDOOR PHOTOGRAPHER (11) NR*     | <input type="checkbox"/> WORKING MOTHER (6)            |
| <input type="checkbox"/> FIELD & STREAM (12)                | <input type="checkbox"/> OUTSIDE (12)                      | <input type="checkbox"/> YOGA JOURNAL (9)              |
| <input type="checkbox"/> FITNESS (10)                       | <input type="checkbox"/> PARENTS (12)                      |                                                        |

Send as many "5 for \$20" orders as you like!

*"Tell your Friends and Families!"*

Send a copy of this page to us. Please make your address as short as possible. **Current customers - Please update your address!**

Allow 6-8 weeks for delivery. Pay by check, money order or **order online** and use credit card or PayPal.

Name and Inmate # (please print, maximum 24 characters):													
Address:													
City:						State:				Zip:			

\* No Renewal



**Inmate Magazine Service**

P.O. Box 2063, Fort Walton Beach, FL 32549 [www.InmateMagazineService.com](http://www.InmateMagazineService.com)

OK to Copy!

# European Court of Human Rights Ruling Rebukes U.S. Prison System

by Derek Gilna

**A**SUSPECTED TERRORIST DIAGNOSED as mentally ill will not be extradited from Britain to the United States to face charges that he conspired to establish a terrorist training camp in the U.S., a European court has ruled.

The Grand Chamber of the European Court of Human Rights (ECHR) denied the extradition of Haroon Rashid Aswat from the United Kingdom to the United States on the grounds that his mental and physical health would face “significant deterioration” in the “more hostile” U.S. prison system.

The ECHR’s initial decision was issued on April 16, 2013; a subsequent ruling, reported in September 2013, resulted from a request by the U.K. for the Grand Chamber to reconsider the case. The decision means Aswat will remain in Britain indefinitely. See: *Aswat v. United Kingdom*, ECHR Case No. 17299/12.

The Court’s ruling was widely viewed as a rebuke of the U.S. justice system’s severity of punishment and the treatment prisoners receive at “supermax” facilities.

Aswat was indicted for his alleged involvement with radical Islamic cleric and suspected terrorist Abu Hamza in a plot to establish a jihadist training camp in Oregon. British authorities detained him in 2005 after U.S. officials requested his extradition. Hamza, who is partially blind and has parts of both hands amputated, was extradited in 2012 to face trial in the U.S.

Under normal circumstances, Aswat also would have been transferred to the United States. Instead, in 2007 he challenged his extradition on the basis of his diagnosis and treatment for paranoid schizophrenia at a high-security psychiatric hospital west of London.

The ECHR found that, “In light of the medical evidence before it, ... there was a real risk that Mr. Aswat’s extradition to the USA, a country to which he had no ties, and to a different, potentially more hostile prison environment, would result in a significant deterioration in his mental and physical health.”

The Court noted that “such deterioration would be capable of amounting to

treatment in breach of Article 3” of the European Convention on Human Rights, which prohibits “inhuman or degrading treatment.”

Representatives from the U.S. Department of Justice had told the ECHR that they could not say for certain how long Aswat would be incarcerated pending trial, nor where he would be held.

The Court said that if extradited, Aswat “could remain in pre-trial detention for a number of years and there was no information as to the conditions of that detention; and that it was likely that if convicted in the USA he would be detained in ADX Florence (a ‘supermax’ prison), where he could be placed alone in a cell and the conditions of isolation were likely to exacerbate his mental illness.”

The ECHR added it had given “full consideration to the submissions of the

U.S. Department of Justice made in the proceedings before the Court, and observed, in particular, that it could not be determined with certainty in which detention facility or facilities Mr. Aswat would be placed if extradited to the USA, either before or after trial. It was also unclear how long he might expect to remain on remand pending trial.”

The ECHR’s ruling marks a rare instance where extradition to the United States was denied on grounds other than the possibility that a defendant might face the death penalty.

Meanwhile, Abu Hamza, Aswat’s co-defendant, went to trial on federal terrorism charges. He was found guilty in May 2014 and will be sentenced in September. ■

Sources: *In These Times*, BBC, [www.telegraph.co.uk](http://www.telegraph.co.uk)

## Bureau of Prisons Mistakenly Served Meat Intended as Pet Food

by Derek Gilna

**A**TEXAS MEAT MANUFACTURER HAS pledged to adopt new procedures to ensure compliance with food safety laws and paid almost \$400,000 to resolve a U.S. Department of Agriculture (USDA) investigation into mislabeled meat that was intended for pet food but instead was sold to the federal Bureau of Prisons (BOP) and served to prisoners.

The U.S. Department of Justice was quick to point out in an August 17, 2012 press release that there was “no evidence that anyone who consumed any of the ... product suffered any ill effects.”

According to the Justice Department, John Soules Foods, Inc. of Tyler, Texas entered into a settlement agreement with the U.S. Attorney’s Office for the Eastern District of Texas and the USDA Food Safety and Inspection Service.

“This settlement agreement upholds the government’s commitment to food safety while also recognizing that John Soules Foods, Inc. is a good corporate

citizen with a long record of regulatory compliance and customer satisfaction,” said U.S. Attorney John Bales.

Under the agreement, the company will pay \$392,000 to the federal government to resolve the USDA’s three-year investigation, and in return John Soules Foods will not be subject to criminal, civil or administrative action. The firm also agreed to adopt new procedures to ensure that it follows the Federal Meat Inspection Act and Poultry Products Inspection Act, and will conduct a review of its existing procedures, records and policies to ensure continuing compliance.

John Soules Foods did not admit civil or criminal wrongdoing and “has cooperated and has demonstrated a desire to continue to cooperate in investigating any allegations that any of their products may have been received in an adulterated state or without the appropriate labeling,” the settlement stated.

The company’s website says it is the leading fajita meat processing company in

the United States; it makes meat products for food service distributors, chain restaurants and supermarkets.

The federal investigation was initiated following allegations that in late 2006 and early 2007, John Soules Foods altered or mislabeled a raw product known as "beef trimmings" before selling it to some wholesale buyers, according to the Justice Department.

USDA investigators found evidence that the company "experienced problems getting some of their beef trimmings product to freeze properly." As a result, John Soules Foods sold the product to an independent meat broker who agreed to resell it as pet food.

John Soules Foods did not change the labeling on the boxes to indicate that it was intended as pet food, with the understanding that the beef trimmings would be sold for that purpose. But investigators said the independent broker "violated the agreement and sold the boxes of pet food beef trimmings to another meat broker for human consumption."

Some of the beef trimmings were then resold to the Bureau of Prisons and

served to prisoners, the Justice Department stated.

Although the BOP claims that its food meets all federal standards, prisoners have long suspected otherwise. Periodic complaints arise about meals causing prisoners to become sick, such as a 2011 outbreak of salmonella that occurred at USP Caanan in Pennsylvania that led to hundreds of lawsuits. [See: *PLN*, Dec. 2013, p.38].

According to a November 7, 2013 news report, the BOP paid over \$700,000 to settle 446 of 513 lawsuits filed by prisoners related to salmonella poisoning at USP Caanan. The outbreak, caused by chicken that had not been properly refrigerated, resulted in prisoners experiencing headaches, diarrhea, abdominal pain, nausea, vomiting and chills.

In 2011 and 2012, some BOP facilities attempted to use meat trimmings packed into plastic sleeves even though prisoners complained about the smell and taste; the quality of the meat was so poor that it could not be formed into meatloaf or hamburgers.

That followed incidents in 2010 in some BOP prisons where cubed turkey was

passed off as chicken. Prisoners complained that the meat's rubbery texture and taste made it unpalatable. It was eventually discontinued after prisoners filed complaints noting that the item was not on the BOP's national menu.

Following the incident involving the John Soules Foods beef trimmings intended for use as pet food, there was no indication whether the BOP will revise its purchasing policies to ensure that food served to prisoners meets minimum standards of quality. ■

Sources: [www.dallasnews.com](http://www.dallasnews.com), [www.justice.gov](http://www.justice.gov), [www.courthousenews.com](http://www.courthousenews.com), [www.penn-live.com](http://www.penn-live.com), <http://derekilna.blogspot.com>

### Actual Innocence

Explains how the innocent are convicted by faulty eyewitness testimonies, police perjury, expert witnesses, prosecutorial misconduct, etc., and how DNA testing is used to free the innocent.

\$17.00 from PLN's Book Store!

See page 61 for more information.

### The American Friends Service Committee is seeking testimony from men, women, and children in US prisons.

Both the United Nations Periodic Review of the US and the Shadow Report for the UN Convention Against Torture are due within the next few months. Both need input from you on "no touch" (solitary), physical and chemical torture, rape, racism, brutality, sexual and other violence, lack of medical care and other aspects of prisoner treatment that violate human rights. We will be accepting testimonies until September 2014. Although we are unable to respond, you will receive confirmation of receipt of testimony. The writing should be no more than two pages describing what you have experienced or seen. Send to Bonnie Kerness, AFSC, 89 Market St. 6th floor, Newark, NJ 07102. We appreciate your courage in sharing your voice. Thank you.

### NEW FRIENDS, HIGHER EDUCATION, AND EMPLOYMENT & HOUSING UPON RELEASE THROUGH WRITEAPRISONER.COM PROFILES

#### Contact WriteAPrisoner.com & Start Looking Forward To Mail Call!

##### AS SEEN ON

CNN, 20/20, Fox News, Dr. Phil, O Magazine, E! True Hollywood, and hundreds more!

#### WriteAPrisoner.com...

Simply the largest, highest ranked, & most visited website of its kind!\*

- Pen-pal Profiles are affordably priced at \$40 for the first year, \$30 for renewing year
- Features a comprehensive search that allows viewers to find your profile by age, race, location, keywords, & more - 32 search options in all
- Your new friends can email their first message to you along with a photo
- Advertises non-stop on every major search engine with thousands of websites linking back to us
- Offers free Reintegration Profiles for inmates seeking employment and housing upon release and education during incarceration
- Translated into 51 languages & geared for international search engines
- Viewers can "subscribe" to your profile to be notified when your profile is updated, blog is added, artwork is posted, poetry is added, your release is near & much more
- Pen-pals have the option of helping you with a broad range of topics using WriteAPrisoner.com's free Self-Help Series



### Get Started Today!

Friends & family can submit your entire 250 word profile, photo, and payment for you online by visiting

[www.writeaprisoner.com/post](http://www.writeaprisoner.com/post)

Or for a FREE Brochure, Send a S.A.S.E. to:

WriteAPrisoner.com  
PO Box 10- PLN  
Edgewater, FL 32132 USA



Proud member of the Better Business Bureau of Central Florida & the Southeast Volusia Chamber of Commerce.  
\*Our website traffic can be independently verified at [www.quantcast.com/writeaprisoner.com](http://www.quantcast.com/writeaprisoner.com)





# DOJ Intervenes in Class-action Suit Challenging New Orleans Jail Conditions; Consent Judgment Entered

by David M. Reutter

**T**HE U.S. DEPARTMENT OF JUSTICE (DOJ) intervened in a class-action lawsuit that alleged “abusive and unconstitutional conditions of confinement” at the Orleans Parish Prison (OPP) in New Orleans, Louisiana. The lawsuit, filed in U.S. District Court by the Southern Poverty Law Center (SPLC), resulted in a consent judgment approved by the court in June 2013.

The DOJ’s intervention in the case came three years after the Department issued a findings letter that concluded numerous conditions and practices at the OPP violated prisoners’ constitutional rights. The DOJ’s September 2009 letter found prisoners were not protected against harm from excessive use of force by staff and prisoner-on-prisoner violence due to inadequate supervision; that prisoners did not receive sufficient medical and mental health care, including proper suicide prevention; that inadequate fire safety precautions placed prisoners at serious risk; and that the jail’s physical structure caused an unreasonable risk of serious harm to prisoners’ health and safety. [See: *PLN*, March 2010, p.30].

However, the DOJ did not take further action until three weeks after the class-action suit was filed by the SPLC. In an April 23, 2012 letter to the City of New Orleans, DOJ officials said deficiencies at the OPP required “emergency action.”

“The depth and breadth of horror stories coming out of that jail are really consistent, which is troubling,” stated SPLC managing attorney Katie Schwartzmann. The DOJ’s motion to intervene “further confirms the gross neglect, sadistic rapes, and brutal beatings that have become so commonplace at Orleans Parish Prison. We hope the sheriff will stand up and finally address the abusive and inhumane conditions that have plagued the jail for far too long.”

A major contributor to violence at the OPP is the understaffing of “densely populated housing pods” and inadequate classification of prisoners, the lawsuit claimed. The sheriff’s office “has failed to take minimum reasonable measures to protect prisoners from harm and is deliberately indifferent to the obvious and substantial risk of harm to prisoners caused

by OPP staff and other prisoners.”

According to the SPLC, documents from the sheriff’s office indicate that in July 2011, guards beat a prisoner in the jail’s temporary tents and tried to cover it up. Further, three prisoners were stabbed by other prisoners, including one who died.

In addition to rampant violence at the OPP, the class-action suit cited a lack of adequate mental health care, general unsanitary conditions, poor food and insufficient assistance for Hispanic prisoners who do not speak English.

There is a complete lack of safeguards for suicidal prisoners, the complaint alleged. The main job of one OPP psychiatrist was “writing prescriptions and occasionally providing reactive crisis care.” Finally, the sick call process at the jail was inadequate and failed to properly treat prisoners’ medical needs.

In April 2013, the district court released videos taken by prisoners using contraband cell phones inside the OPP’s now-closed House of Detention, which showed them using drugs, gambling, drinking beer and displaying a loaded gun at the jail. One video even showed a prisoner who had apparently escaped and was walking down Bourbon Street, an area known for bars and strip clubs. The release of the videos resulted in a firestorm of criticism against Orleans Parish Sheriff Marlin N. Gusman; the videos, which were four years old, reportedly had been locked in a safe at the sheriff’s office and not previously disclosed.

“It is now clearer than ever that the Orleans Parish Sheriff’s Office is not keeping the prison secure and our city safe,” said New Orleans Mayor Mitch Landrieu.

The DOJ informed the district court that both parties had agreed to its motion to intervene in the class-action suit because that would be the most efficient way to resolve the case “with a single, comprehensive remedy.”

On June 6, 2013, the court approved a consent judgment between the DOJ, the plaintiff class and the sheriff’s office. The 53-page judgment addressed issues ranging from use of force policies, procedures, training and reporting to staffing, mental health care and suicide prevention, medical care, sanitation and environmental conditions,

fire safety, juvenile prisoners held at the jail, and compliance and monitoring. The consent judgment will remain in effect until the defendants achieve substantial compliance with its terms and have maintained substantial compliance for two years.

According to the Orleans Parish Prison Reform Coalition, however, “The consent decree has not resulted in significant improvement in the conditions in the jail, and the first report of the federal monitoring team found that inmates in OPP ‘continue to experience severe problems with shoddy medical care, violence and a general attitude of apathy toward their grievances.’”

Indeed, there have been ongoing problems at the OPP following the approval of the consent judgment. On March 23, 2014, a prisoner died following a fight with another prisoner at the jail’s temporary tent housing unit. The prisoner, Willie Lee, 40, reportedly died due to heart failure.

Further, OPP guard Lateefa Marshall, 32, was fired and named a fugitive in May 2014 after being charged with assaulting a female prisoner at the jail. Marshall, who faces a felony charge of malfeasance in office, is accused of starting a fight with the prisoner and then filing a false report concerning the incident.

“It basically amounted to simple battery,” said Sheriff Gusman. “She was seen striking the [prisoner] several times but there were no other weapons involved. But this was a type of conduct that should not have occurred. We don’t tolerate that conduct.”

In October 2013, the parties to the class-action suit agreed to settle the amount of attorneys’ fees in the case, with the Orleans Parish Sheriff’s Office agreeing to pay \$900,000 to the SPLC in 60 monthly installments of \$15,000 each, beginning on January 15, 2014. See: *Jones v. Gusman*, U.S.D.C. (E.D. La.), Case No. 2:12-cv-00859-LMA-ALC.


The sheriff’s office subsequently entered into a partial settlement agreement with the City of New Orleans, which it had named in a third-party complaint in the SPLC’s class-action suit, in April 2014. The agreement addresses funding to hire additional jail staff in fiscal year 2014, which will help the sheriff’s office comply with the

terms of the consent judgment.

Most prisoners held at the OPP will be moved to a new \$145 million, 1,438-bed facility, the Intake & Processing Center, which is scheduled to open soon. The provisions of the consent judgment apply to the new facility.

In May 2014, the New Orleans City Council released details about a new plan for the parish's jail system, which includes a smaller jail population, minimizing new jail construction and housing prisoners with mental health needs at the Intake & Processing Center.

Sheriff Gusman did not attend the event, stating it "would not be beneficial" due to unresolved issues between the city and the sheriff's office. Gusman wants to renovate another 285-bed jail facility, known as Templeman V, and use it to house high-security prisoners.

The city's jail system plan would cost around \$6 million while Sheriff Gusman's proposal would cost an estimated \$10 million. 

Additional sources: *Associated Press*, *Times-Picayune*, [www.opcs.org](http://www.opcs.org), [www.theneworleansadvocate.com](http://www.theneworleansadvocate.com), <http://opprc.wordpress.com>, [www.nola.com](http://www.nola.com)

## BRANLETTES BEAUTIES

### OUR SIMPLE POLICIES:

SPECIAL REQUESTS ARE NOT PERMITTED AND ALL MODELS ARE OF LEGAL AGE (BOP-FRIENDLY). DUE TO TREMENDOUS TIME AND COST ANSWERING LETTERS, UNLESS YOU ARE PLACING AN ORDER OR A QUESTION REGARDING YOUR ORDER, WE WILL NOT REPLY TO ANY OTHER QUESTIONS. SASE ARE REQUIRED FOR ANY INQUIRIES OR CONCERNS!

YOU AND YOU ALONG ARE RESPONSIBLE FOR YOUR SELECTIONS BEING ALLOWED INTO YOUR FACILITY:

KNOW YOUR INSTITUTIONS POLICIES AS TO WHAT IMAGE CONTENT IS ALLOWED. RETURNED ORDERS ARE NON-REFUNDABLE. THEY WILL BE HELD FOR 14 CALENDAR DAYS IN ORDER FOR YOU TO SEND SELF-ADDRESSED STAMPED: 3 FIRST CLASS STAMPS PER ENVELOPE, WITH A STREET ADDRESS FOR EVERY 20 PICTURES. ALL RETURNED IMAGES HELD AFTER TWO WEEKS WILL BE RE-SOLD AND WE WILL RETURN TO OUR STOCK.

ALL PAYMENTS ARE BY INSTITUTIONAL CHECKS OR U.S. POSTAL SERVICE OR WESTERN UNION MONEY ORDERS.

THESE PAYMENTS ARE PROCESSED IMMEDIATELY AND SHIPPED IN LESS THAN 3-4 WEEKS. ANY OTHER COMPANY MONEY ORDERS DELAY SHIPMENT 8-10 WEEKS OR UNTIL THAT MONEY CLEARS OUR BANK. YES, WE DEAL WITH PEOPLE THAT ARE, WHILE IN PRISON, STILL TRYING NICKEL AND DIME SCAMS...

**ALL SALES ARE FINAL! EACH CATALOG HAS 84 GORGEOUS LADIES TO CHOOSE FROM HIGH QUALITY PRINTS ON 4X6 GLOSSY PHOTO PAPER**

OUR PRICES ARE SIMPLE:

1-4999 PHOTOS = 0.45 CENTS EACH  
5000+ PHOTOS = 20% DISCOUNT  
1-9 CATALOGS: \$3.00 EACH (+SASE)  
10 CATALOGS: \$25.00+SASE (4 STAMPS)

SHIPPING & HANDLING:

DUE TO VARIOUS PRISON POLICIES REGARDING HOW MANY PICTURES CAN BE SENT IN ONE ENVELOPE, OUR POLICY IS AS FOLLOWS:

01 - 5 PHOTOS---\$1.00 PER ENVELOPE  
06 - 15 PHOTOS---\$1.50 PER ENVELOPE  
16 - 25 PHOTOS---\$2.00 PER ENVELOPE

### BRANLETTES BEAUTIES

SELECT YOUR FAVORITE:

WHITE CATALOGS (60 VOLUMES)  
BLACK CATALOGS (60 VOLUMES)  
ASIAN&LATINO CATALOGS (60 VOLUMES)  
PLEASE STATE WHAT STYLE PHOTOS:  
PROVOCATIVE POSES OR NUDE

### FREE CATALOG???

YOU READ IT RIGHT!  
JUST SEND US TWO U.S. FOREVER STAMPS AND A SELF ADDRESSED SELF ENVELOPE AND WE WILL SEND TO YOU ONE NUDE OR BOP-FRIENDLY SAMPLE CATALOG (1 PER CUSTOMER) WITH 84 GORGEOUS GIRLS IN FULL COLOR. ACT NOW AS THIS OFFER WILL NOT BE AROUND LONG!!

BRANLETTES BEAUTIES BAG A RANDOM SELECTION OF 50 OF THE RARE AND EXOTIC \*\*\*YES, FIFTY BEAUTIES ALL POSING JUST FOR YOU\*\*\* PLUS TWO OF OUR FINEST COLOUR CATALOGS ONLY \$19.95 DID YOU READ THAT RIGHT?? \*\*\*\$19.95\*\*\* YES, ONLY \$19.95 FOR 50 OF BRANLETTES BEAUTIES (PLEASE SPECIFY NUDE OR BOP-FRIENDLY) \*\*\*PLUS\*\*\* TWO OF OUR FINEST COLOUR CATALOGS FREE (YOU PICK A VOLUME) OUR REGULAR SHIPPING AND HANDLING POLICIES APPLY.

**BRANLETTES**  
P.O. BOX 5765  
BALTIMORE, MD  
21282

# INMATE TOLL BUSTERS

## Discount Inmate Telephone Calling Services

Serving: Federal & State Prisons, County Jails and INS Detention Centers Nationwide

FREE Same Day Installation, Only \$1.25 Per Month and 6¢ Per Minute

## PAY ONLY FOR MINUTES YOU USE

[www.InmateTollBusters.com](http://www.InmateTollBusters.com)

Call 24 Hours: 888-966-8655

We Send Calls To Cell Phones.  
International Call Services Available.  
Call For Rates. Se Habla Español.



# D.C. Circuit Reinstates Prisoner's FOIA Suit

by Derek Gilna

CARLOS MARINO, INCARCERATED FOR a 1997 drug conspiracy conviction, submitted a Freedom of Information Act (FOIA) request to the Drug Enforcement Administration (DEA), seeking the agency's investigative file for a co-conspirator who had testified against him at trial. The DEA denied his request and an administrative appeal, and Marino filed suit in the U.S. District Court for the District of Columbia.

He argued that most of the information sought in his FOIA request was in the "public domain" because it was disclosed during his trial, and that "the public interest in revealing the government misconduct he alleged outweighed the personal privacy interests the DEA had interposed."

The DEA moved to dismiss, relying on FOIA Exemption 7(C) – which "allows an agency to withhold 'information compiled for law enforcement purposes' if disclosure 'could reasonably be expected to constitute an unwarranted invasion of personal privacy.'" Marino failed to respond and the district court granted summary judgment to the DEA.

Marino then filed a motion for reconsideration and a motion under Rule 60(b) for relief from judgment, citing a "grossly negligent" effort on the part of his attorney as an excuse for his failure to timely respond to the DEA's motion.

Fed.R.Civ.P. 60(c)(1) allows a court to grant relief for failure to timely file if a party can show they have "a meritorious claim or defense to the motion upon which the district court dismissed the complaint." Marino's motions were denied and he appealed.

The D.C. Circuit reversed, finding that Marino had cleared the "meritorious defense" hurdle by showing that "vacating the judgment will not be an empty exercise or a futile gesture."

The appellate court then addressed the public domain issue, triggered when "the prior disclosure establishes the existence (or not) of records responsive to the FOIA request." The DEA objected that "Marino's theory of the case is no defense because public information showing the existence of an investigatory file ... does not vitiate its right under FOIA exemption 7(C) to

withhold the contents of that file."

The Court of Appeals disagreed, finding that the public domain exception provided Marino "with a meritorious defense to the DEA's summary judgment motion," and remanded the case for the district court to consider the merits of Marino's Rule 60(b) motion to vacate the summary judgment order. See: *Marino v. DEA*, 685 F.3d 1076 (D.C. Cir. 2012).

Following remand, Marino was released from prison then died before his claims were decided, and in December 2013 the district court designated a surviving family member, Griselle Marino, as a substitute plaintiff.

On February 19, 2014, the court denied the DEA's renewed motion for summary

judgment, writing that "The purpose of FOIA is to 'pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.'" The district court held the DEA was not entitled to summary judgment under Exemption 7(C), and that Marino had "demonstrated a significant public interest" in the requested documents, which showed the co-conspirator who testified against him at trial – Jose Everth Lopez – had committed perjury, and that a federal prosecutor had withheld evidence.

Marino's cross-motion for summary judgment also was denied, and the case remains pending before the district court. See: *Marino v. DEA*, U.S.D.C. (D. D.C.), Case No. 1:06-01255-GK; 2014 U.S. Dist. LEXIS 20191. ■

## Florida Guards Sentenced in Bribery Scheme

THREE FORMER FLORIDA PRISON GUARDS, including a security chief, were sentenced to probation and ordered to perform community service after entering guilty or no contest pleas to charges that they accepted bribes to perform favors for prisoners, including supplying contraband, providing special treatment and "protection." The charges stemmed from events that occurred at the Calhoun Correctional Institution (CCI) in Blountstown, Florida, where the guards worked.

Colonel John "Sammy" McAlpin, 43, pleaded guilty in Calhoun County Court to multiple charges of misdemeanor petit theft and was sentenced in October 2013 to one year of probation and 150 hours of community service. He also forfeited his corrections certification.

Former prison guard Stephen Whit Pickron, 34, pleaded no contest and was sentenced on May 15, 2013 to 104 days in jail, 10 years' probation and 250 hours of community service. The court dismissed Pickron's jail sentence on November 18, 2013 in response to a motion to modify his sentence.

Former guard Nicholas Anson Hansford, 24, also pleaded no contest and was sentenced on May 15, 2013 to 104 days in jail, 10 years of probation and community service. Like Pickron, Hansford filed a mo-

tion to modify and the court subsequently removed his jail term.

Pickron, Hansford and McAlpin – the former Chief of Security at CCI – were all arrested in September 2012 and charged with unlawful compensation for official behavior. McAlpin was further charged with official misconduct.

According to an affidavit filed by the Florida Department of Corrections (FDOC), the trio's bribery scheme was discovered in November 2010 after the husband of a guard found 40 letters written to his wife by a prisoner at CCI. The letters detailed a relationship between the prisoner and the woman, and in one letter the prisoner "indicated he was paying for protection and that 'Big Daddy' looked out for him," the affidavit stated. Investigators said "Big Daddy" was a nickname given to McAlpin.

The prisoner wrote that he had paid \$500 for protection and the use of a cell phone. The letters also implicated other FDOC guards who were involved in illicit activities.

The guard's husband turned over copies of the letters to a sergeant at CCI, who gave them to Col. McAlpin, who then convened an investigation. The female guard involved in a relationship with the prisoner who wrote the letters was fired,

and the prisoner was placed in segregation while the investigation remained pending. McAlpin reported that he put the letters in the warden's office for safekeeping before giving them to Law Enforcement Inspector Mike Harrison with the FDOC's Office of Inspector General.

When Harrison interviewed the former guard's husband in January 2011, however, it was learned that some of the letters were missing. The FDOC affidavit stated the woman's husband then provided a complete set of copies of the letters to investigators, and Harrison discovered the missing letters referenced money paid to McAlpin and other guards.

The prisoner who wrote the letters said in a sworn statement on December 21, 2011 that he had given McAlpin \$2,400. The prisoner told authorities that McAlpin offered protection to prisoners at CCI and notified them of unannounced contraband searches, and estimated that McAlpin had received more than \$20,000 in Western Union money orders over the preceding year from prisoners' friends and relatives.

Separately, a former prisoner told

authorities that between May 24 and June 4, 2010, he met with Pickron and gave the guard \$400 in cash and eight Western Union money orders totaling \$2,750 that were sent to him from families of CCI prisoners. Pickron later admitted he had accepted the cash and said he turned it over to McAlpin.

Pickron also picked up a \$400 money order on November 12, 2010 that came from a prisoner's girlfriend. The next day, the prisoner told his girlfriend in a recorded phone conversation that the payment was for a job change at CCI.

Six days later, Pickron received a \$1,500 money order from a prisoner's sister. A phone call recorded the prisoner telling his sister the money was to make things "better for him." The same woman sent Pickron \$300 on December 9, 2010; the prisoner later admitted the money was in exchange for alcoholic beverages and information from the Internet. The prisoner's sister sent another \$700 within the next six weeks. "There's been some big changing around here," the prisoner told her in a phone call. "I can't explain it, but

everything is so perfect now."

When investigators questioned Pickron on September 19, 2012, he said he kept only a small portion of the money each time and gave the rest to McAlpin. He stated McAlpin had originally approached him, saying, "You know, there is money to be made.... You can make money off these inmates like this." For his participation in the bribery scheme, Pickron received a post change that gave him weekends and holidays off.

The investigation also revealed that Hansford was involved in the scheme. He deposited \$300 worth of money orders into his personal bank account in October 2010. Using the alias "Stan Smith," he also received money orders totaling \$1,455 from prisoners in exchange for smuggling contraband into CCI between March 7 and June 7, 2012.

Notably, none of the three guards involved in the bribery scheme was required to serve jail time despite their egregious misconduct. ■

Sources: [www.corspecops.com](http://www.corspecops.com), [www.cjnews.com](http://www.cjnews.com)

**William L Schmidt**  
ATTORNEY at LAW, P.C.

[911CIVILRIGHTS@GMAIL.COM](mailto:911CIVILRIGHTS@GMAIL.COM)

**559.261.2222**

#### OCTOBER 2013, CALIFORNIA:

- \$90,000 settlement with CDCR and LA Sheriff
- Confidential settlement with CDCR
- \$600,000 injury recovery
- \$150,000 bad faith settlement
- Federal action dismissed without penalty by agency
- Parole dates granted by BPH

CIVIL RIGHTS-SECTION 1983-FEDERAL AND STATE  
APPEALS AND WRITS- ONLY COMPLEX AND UNIQUE CASES  
PRISON-TRANSFER-DISCIPLINE-VISITING-CLASSIFICATION-HOUSING  
PROP. 36 RE-SENTENCING-3 STRIKES-MEDICAL-PAROLE HEARINGS

-----OUR CLIENTS GO HOME, HOW ABOUT YOU? -----

*Please submit a single page summary of your case. Due to the volume, we cannot return documents or respond to all inquires. We are not a low cost or pro bono law firm, but if you want results, contact us.*

**PO Box 25001  
Fresno, CA  
93729**



# CCA Guard Killed During Riot was on Prisoners' "Hit List"

by Matt Clarke

A FEDERAL LAWSUIT FILED BY THE family of a guard murdered during a riot at a Mississippi facility claims that prison officials knew the guard was on a "hit list" compiled by prisoners when he was called in to help quell the disturbance.

Catlin Hugh Carithers, 24, was beaten to death during a May 20, 2012 riot at the Adams County Correctional Center near Natchez. The facility is operated by the Nashville, Tennessee-based Corrections Corporation of America (CCA), the nation's largest for-profit prison company. The 2,567-bed Adams County facility houses low-security adult male immigrants for the federal Bureau of Prisons, most of whom face deportation after finishing their prison sentences.

Adams County Sheriff Chuck Mayfield initially told reporters that the disturbance involved a power struggle between two different factions of prisoners, but an affidavit filed in federal court by an FBI agent in August 2012 stated the riot was a protest by prisoners against poor food, inadequate medical care and alleged mistreatment by staff at the facility.

In addition to Carithers' death, half a dozen guards were held hostage and others were trapped for hours inside the prison. Twenty people, including both prisoners and employees, suffered injuries; investigators said the riot involved up to 300 prisoners and caused an estimated \$1.3 million in property damage.

Ironically, the cover of CCA's 2012 annual report featured a full-page color photo of the Adams County Correctional Center as it looked before the riot.

Numerous prisoners were charged with participating in the disturbance. Nine pleaded guilty on March 11, 2014 to one count each of rioting in a federal correctional facility, according to a press release issued by the U.S. Attorney's Office. Nine other prisoners had previously been charged in connection with the riot and four were convicted.

The lawsuit filed by Carithers' family claims that "the facility was short staffed and underequipped, and the inadequate staffing and treatment of the inmates created dangerous working conditions for correction officers working there." Further,

CCA "created a dangerous atmosphere for the correction officers by depriving the inmates of basic needs and treating them inhumanely."

The suit also alleges that two days before the riot, a CCA security official was alerted by an informant at the facility that prisoners planned to stage the protest and that Carithers was one of several guards on a "hit list."

The next day, according to the lawsuit, "the inmate informant again informed the facility security officer that the situation was more serious than first thought. Again, the inmate warned that certain correction officers were on a 'black list' and any officer that disrespected an inmate would be punished." The informant was communicating with the security official via text and email using a contraband cell phone, which the informant was allowed to possess.

The CCA security official, identified by the informant as John Vanik, allegedly knew that Carithers was on a "hit list" when Carithers was called into work after the riot broke out – on his day off – and knew that prisoners "intended on injuring, or punishing" the guards on the list. An email from Vanik stated he had passed the informant's warnings on to the warden.

The hours-long disturbance at the Adams County prison began at 2:40 p.m. and centered on the inner compound and housing units. Prisoners were seen armed with makeshift weapons, including broom handles and trash can lids. They also built a bonfire in the prison yard but none tried to escape. Sheriff Mayfield said the facility's Special Operations Response Team (SORT) and guards from other CCA-run prisons in the area responded to the disturbance, along with sheriff's deputies and the Mississippi Highway Patrol.

On the day of the riot, one prisoner told a local news channel that the CCA guards "always beat us and hit us. We just pay them back.... We're trying to get better food, medical [care], programs, clothes, and we're trying to get some respect from the officers and lieutenants."

The *Jackson Free Press* reported receiving an email from a prisoner the day after the disturbance, stating: "The guard that died yesterday was a sad tragedy, but the

situation is simple: If you treat a human as an animal for over two years, the response will be as an animal."

PLN managing editor Alex Friedmann said the informant at Adams County contacted him following the riot. Friedmann, who also serves as president of the Private Corrections Institute (PCI), a non-profit watchdog group opposed to prison privatization, said that according to the informant, the day before the disturbance the warden met with two prisoners whom he believed were leaders among prisoner factions at the facility.

What the warden did not realize, however, was that the two "leaders" no longer had any influence over the other prisoners, as they had been removed from their leadership positions prior to the riot. "CCA didn't know and these guys didn't say they'd been forced out by the other inmates. They weren't aware these guys had no say anymore and no power to control the guys in their groups," Friedmann explained.

"The next day the inmates begin congregating on the yard," he continued. "The [guards] who were there at the time took a strong, hard response, and they threw tear gas from the roof to break up the congregation, and [the prisoners] climbed up on the roof and assaulted the guards throwing tear gas at them." Carithers was one of the guards on the roof.

Friedmann also blasted CCA board chairman John D. Ferguson for refusing to honor Carithers at the company's annual shareholder meeting on May 16, 2013. Friedmann, who served six years in a CCA-operated prison in the 1990s, called for a 30-second moment of silence for Carithers near the end of the meeting.

"CCA holds a shareholder meeting just once a year, and they couldn't give 30 seconds to honor the memory of one of their own who died in the line of duty," Friedmann said in a PCI press release. "That is callous and insensitive. It is also indicative of the value that CCA places on its employees. This is the one time, at the annual meeting, that shareholders could collectively recognize Mr. Carithers."

Friedmann said he became a shareholder in order to keep a watchful eye on

CCA. "I own a small amount of stock which allows me to attend the company's annual meetings and introduce shareholder resolutions," he stated.

The riot and its aftermath caught the attention of federal lawmakers. "There are some issues with the privately run facilities, so I think between the Bureau of Prisons and the Department of Homeland Security, you will see some restricting of that process," said U.S. Rep. Bennie G. Thompson, a Mississippi congressman and the ranking Democrat on the House Committee on Homeland Security.

The lawsuit filed by the Carithers family remains pending; CCA filed a motion to dismiss, which was denied on March 17, 2014. See: *Carithers v. CCA*, U.S.D.C. (S.D. Miss.), Case No. 5:13-cv-00066-DCB-MTP.

CCA is not the only for-profit prison company that has experienced problems in Mississippi. Private prison firm GEO Group lost contracts to operate three facilities in the state, including the Walnut Grove Youth Correctional Facility, which was the subject of a federal lawsuit that exposed extremely brutal and violent conditions, including rampant sexual abuse of juvenile offenders. [See: *PLN*, Nov. 2013, p.30].

Sources: *www.hattiesburgamerican.com*, *www.clarionledger.com*, *www.wapt.com*, *Natchez Democrat*, *www.thinkprogress.org*, *www.courthousenews.com*, *www.fbi.gov/jackson*, *Associated Press*, *PCI press release*, *Huffington Post*, *Jackson Free Press*

## Cook County Detainee's Suit Alleging Deliberate Indifference to Safety Survives Summary Judgment

by David M. Reutter

**T**HE SEVENTH CIRCUIT COURT OF Appeals has reversed a district court's grant of summary judgment to a jail guard accused of being deliberately indifferent to a prisoner's safety.

The case involved an incident that occurred at the Cook County Jail in Chicago, Illinois. The plaintiff, pretrial detainee Uvion Junior, was housed in a maximum-security tier at the facility with 19 two-man cells. To minimize "detainee incidents," no more than 20 of the 38 prisoners on the tier were allowed to use the dayroom area at the same time.

When guard Summer Anderson came on shift one day, she noticed two cells were not properly locked. She wrote "security risk" in her log but took no further action. At around 6:30 p.m. that evening she released half the prisoners on the tier for their scheduled dayroom time. Some prisoners asked Anderson to let the other half out, too. Shortly afterward the other cells were opened and Anderson then left her post for up to 20 minutes.

The detainees released from the second set of cells did not enter the dayroom; rather, they congregated in a darkened corridor between the two rows of cells on the tier. Needing to use the restroom, Junior entered

the corridor to return to his cell. He was attacked from behind by several prisoners armed with shanks, suffered multiple stab wounds and ran to Anderson's guard station for help, but she wasn't there. He was hospitalized for two days.

The Seventh Circuit held the district court had prematurely dismissed Junior's suit. It was fear of violence that had motivated the rule forbidding more than 20 prisoners to mingle in the dayroom area, and the risk of violence was further amplified by the sole guard leaving her post. The dark corridor made the situation more dangerous by allowing the prisoners who attacked Junior to hide. Those facts could allow a jury to find Anderson was deliberately indifferent to prisoner safety, resulting in Junior's injuries.

The Court of Appeals also noted this case raised claims that "cry out for evidence that a lawyer could obtain but the [pro se] plaintiff could not." As there was no basis to assume that Junior's claims lacked merit, the district court's grant of summary judgment to Anderson was reversed and the court was ordered to try to recruit counsel for Junior on remand. The case currently remains pending. See: *Junior v. Anderson*, 724 F.3d 812 (7th Cir. 2013).



Serving You with Excellence Since 2009

**We make it simple.**

**You reach your loved ones by calling a local number. That's a lot cheaper than calling long distance. It's that simple!**

- We charge \$2.50 per month for the number.
- For Calls to anywhere in the U.S., we charge you 5¢ per minute
- To Mexico - 15¢; to Canada - 11¢, to just about anywhere else in the world - 31¢
- No Contract, No Credit Check, No Setup Fee, No Cancellation Fee, No Early Termination Fee
- Cancel anytime; any money left on the account is refunded

Any time you refer a new customer and they sign up, you both get 300 free minutes! Some restrictions apply. Details upon request.

Tell Your Folks to Sign Up at [www.freedomline.net](http://www.freedomline.net)

Or Mail: FreedomLine  
PO Box 7 - SCA  
Connersville, IN 47331

Also see our long-running Classified Ad in this and every issue

FCC Reg. No. 0021217047

# Prison Officials Praise Industry Programs Despite Downsides

by David M. Reutter

**A**S THE U.S. ECONOMY REMAINS SLUGGISH and companies consider layoffs to cut costs, the outlook for prison industry programs is mixed, with some reporting increased revenue and others reporting net losses.

Prison industries are big business according to a 2012 report by the Louisiana Legislative Fiscal Office, which examined industry programs in 15 Southern states.

The report found the programs employed 23,838 prisoners and generated \$473.8 million in sales with \$1.6 million in net profit in fiscal year 2012. What states did with those proceeds varied; some reinvested profits into their industry programs while others used the funds for other purposes.

State prison industry programs, however, are dwarfed by UNICOR, the trade name for Federal Prison Industries. UNICOR employs around 13,000 federal prisoners at factories in 62 facilities, and reported gross revenue of \$609.7 million in fiscal year 2013 – but a net loss of \$4.2 million. UNICOR has been laying off workers and closing some of its factories over the past several years. [See: *PLN*, Nov. 2013, p.52].

Prison officials are quick to tout the advantages of their industry programs.

“The benefits of TCI [Texas Correctional Industries] are twofold,” said spokesman Jason Clark. “From a fiscal perspective, TCI benefits the state of Texas by generating cost savings.... From a rehabilitative perspective, TCI places offenders in realistic work environments and enables them to obtain marketable job skills.”

TCI produces over \$70 million in products each year, including engraved mugs, furniture, lockers, fencing, janitorial supplies, apparel, Texas flags and awards, and other items. Most prisoners who work for TCI are not paid.

In March 2014, the California Prison Industry Authority began offering a Computer-Aided Design program for women prisoners at the Green Valley Training Center, in which they will use CAD software “to improve existing correctional industry product designs and to develop new products,” according to *The Folsom Telegraph*.

“This program ensures offenders have the job skills they need to stay on a positive path toward employment when they are released,” said Jeffrey A. Beard, secretary of California’s prison system and chairman of the Prison Industry Board.

Tennessee’s prison industry program, TRICOR, reported saving taxpayers \$3.3 million in “supervision and programming costs” in 2012. It also transferred \$194,000 into a criminal injuries compensation fund for victims that year.

The 2013 annual report for North Carolina Correction Enterprises indicated it had \$90.3 million in sales that fiscal year, with a \$2.5 million net loss. Among other items, the prison industry program produces highway signs, janitorial supplies, furniture, paint and eyeglasses.

Louisiana’s Prison Enterprises, which operates a garment factory and other programs, reported a \$1.27 million net profit in fiscal year 2012 on gross revenue of \$17.9 million. All profits go back into the program to repair equipment, cover utilities and staff salaries, and pay prisoner wages – which range up to \$.20 per hour.

Many state prison industries also operate PIE (Prison Industry Enhancement) programs, which allow free-world businesses to use prisoner labor to produce goods and services sold on the open market. [See: *PLN*, March 2010, p.1]. The National Correctional Industries Association reported that 4,618 prisoners were employed in PIE programs nationwide as of December 31, 2013. Prisoners who work in PIE programs typically earn minimum wage, but there are deductions for victim restitution, room and board, family support and taxes. In 2013, PIE program workers earned a total of \$41.45 million with \$24.92 million (or around 60%) in deductions.

Most prison industries cite the rehabilitative benefits of their programs, in terms of providing prisoners with job skills and work experience.

“While it operates as a business, the real output is inmates who are trained in marketable skills so that they can return to the community as productive members of society,” UNICOR’s senior deputy assistant director, Philip J. Sibal, told a Congressional committee in June 2012.

But one of the downsides of prison industry programs is that they use low-cost prisoner labor that sometimes unfairly competes with free-world businesses.

For example, hundreds of jobs at clothing factories in Alabama, Kentucky and Tennessee, and at a helmet-manufacturing company in Pennsylvania, were lost or put at risk due to competition from UNICOR. [See: *PLN*, March 2014, p.52; Feb. 2013, p.42; July 2009, p.21].

American Power Source, an Alabama company, announced in September 2012 that it planned to close two plants after losing a contract to make exercise clothing for the U.S. Air Force. The contract went to UNICOR. The plants ultimately remained open, but 50 of the company’s employees, who made at least \$9.25 per hour, lost their jobs to federal prisoners who will earn up to \$1.15 an hour in a UNICOR program.

American Power Source employee Misti Keeton empathized with the prisoners, as she used to be incarcerated herself. Yet she has a family to feed and said she feared losing her job.

“I’m terrified,” she stated. “I’ve got two teenagers at home. I don’t know what I’m supposed to say to them if I lose this job. I don’t know what I’m supposed to feed them.”

“The government doesn’t want me to be on welfare,” Keeton continued. “They don’t want me to be a repeat offender. So why are they going to give my job to someone who is not going to come to this plant when they get out of prison?”

She raises a good point – a point that indicates the rehabilitative benefits of prison industry programs may be illusory in terms of providing prisoners with job skills they can use to obtain post-release employment.

Cathy Griffiths, operations manager at American Power Source, noted that the garment industry mostly employs women.

“[T]his has always been a working mother’s job – we work 7 to 3 and the wages, though not always the best, they’re good, decent wages,” she said. “Of the company’s 261 employees, fewer than 10 are men. Sewing is not something men do for a living in the United States.”

However, as of January 2014, almost

all of UNICOR's 22 clothing and textile factories were located in facilities that house male prisoners – which raises questions as to whether the skills they are learning will

actually help them obtain jobs after they're released, or if they are primarily being used as low-paid labor to generate revenue for prison industry programs. ■

Sources: *Associated Press*, [www.theadvocate.com](http://www.theadvocate.com), [www.nationalcia.org](http://www.nationalcia.org), [www.military.com](http://www.military.com), *The Dothan Eagle*, [www.folsomtelegraph.com](http://www.folsomtelegraph.com)

## Ohio Community Corrections Program Hires Former Prisoners to Work at Supermax

**T**HE CLOSURE OF A MINIMUM-SECURITY facility in Ohio created temporary jobs for prisoners who are being released, through a pilot program to help integrate them into society while saving the state money. The catch? The former prisoners work at a prison.

When Ohio officials closed a 240-bed minimum-security satellite facility on the grounds of the Ohio State Penitentiary (OSP) in the fall of 2012, it left a void. Prisoners at the satellite facility had prepared the meals for about 500 prisoners at OSP, the state's highest security prison, which keeps prisoners confined to their cells 23 hours a day.

The Community Corrections Association, a non-profit organization that runs a halfway house transition program, obtained a contract to fill that void.

Fourteen of Community Corrections' clients, who are either on probation or in a post-prison transition program, are shuttled by van to work two shifts of food service at OSP. Starting at 4:30 a.m. each day, the Community Corrections workers prepare meals for OSP prisoners; guards then deliver the meals to the prisoners' cells.

Community Corrections also entered into a contract to perform janitorial services at OSP. That arrangement, which began in September 2012, provides jobs for three Community Corrections clients. None of

the jobs, either janitorial or in food service, entail the workers having direct contact with OSP prisoners.

"It gives you a chance to get back on your feet," said Christopher Guy, a janitor at OSP employed in the Community Corrections program. "It gives us a chance to prove to the community that we have what it takes to re-enter society and be trusted doing it."

OSP Warden David Bobby, who previously worked at Community Corrections, developed the pilot program. "Sixty days after they're done with supervision from [Community Corrections], we want them to go and find another position somewhere else," he said. "Even while they're here, my expectation is that they continue to pursue other employment."

On average, participants in the Community Corrections program will work at OSP for six months. "The goal is that these guys come here, get some work experience, earn some money, and go and be productive members of society," Bobby stated. "We ask the community to hire these ex-offenders, so to do our share, I think it's only prudent that we do the same thing."

Those employed in the Community Corrections program at OSP are classified as temporary workers and make \$12 to \$14 per hour, with 25% of their earnings withheld to cover costs. They keep the remainder

of their pay.

"When they leave us, they're walking out the door with thousands of dollars in their pockets to either set up independent living or to go back to family and loved ones," said Community Corrections chief operations officer Jeremy Simpson.

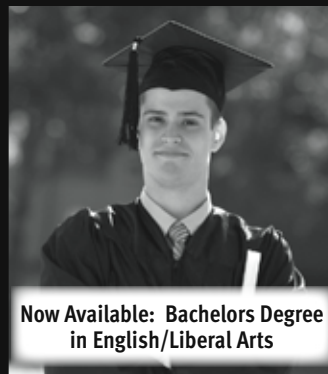
When not working at OSP, the Community Corrections clients participate in substance abuse treatment, GED preparation and other self-improvement programs. The state hopes to reduce recidivism through the pilot program – and to save around \$1.5 million a year through the closure of the minimum-security satellite facility.

Of course, if the Community Corrections Association was serious about helping released prisoners successfully reintegrate into society, it would help them develop meaningful job skills and find employment outside the prison system, rather than use them as cheap temporary labor at OSP. ■

Source: [www.vindy.com](http://www.vindy.com)

**Hepatitis & Liver Disease:  
A Guide to Treating & Living  
with Hepatitis & Liver Disease**  
Revised ed. By Dr. Melissa Palmer  
See page 61 for more information.

## Earn an Adams State University Degree via Correspondence Courses



- Correspondence Courses via mail • No internet access required
- Degree options available — Associate of Arts or Science, Bachelors degrees in English, Business Administration, Government, History, Interdisciplinary Studies, Sociology, Paralegal Certificate Program, Masters Degree in Business Administration
- Affordable tuition — \$165/semester hour for undergraduate correspondence courses, \$350/semester hour for Masters level correspondence courses  
Payment options include cashiers check, credit card, money order or verified personal check
- Accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools
- 16+ years of experience serving incarcerated students
- Veteran friendly
- FREE unofficial evaluation of previously earned credits



Call or write to receive additional information — 800-548-6679  
Adams State University  
Office of Extended Studies, Suite 3000  
208 Edgemont Blvd. Alamosa, CO 81101  
[www.adams.edu](http://www.adams.edu)



# Nebraska County Attorney's Conviction Reversed for Theft from Pretrial Diversion Program

by David M. Reutter

THE NEBRASKA SUPREME COURT HAS reversed the theft conviction of a county prosecutor who stole funds from a pretrial diversion program he created.

When John Blake Edwards took office as the county attorney for Keith County in January 2007, he started a pretrial diversion program that allowed for dismissal of charges once a defendant had completed program requirements such as "community service or alcohol education."

The Board of County Commissioners approved the program, but required that it be self-funded. Fees and costs paid by offenders participating in the program were deposited into an account with Edwards as the only authorized signer. Between March 7, 2007 and August 13, 2008, he spent \$7,257.11 from the account.

In April 2008, a county commissioner filed a complaint with the Attorney General's office alleging misuse of public funds in connection with the pretrial diversion program. No action was taken by the Attorney General, and the county board later adopted a revised diversion program that required fees and costs to be deposited with the county commissioners. It did not address the funds in the previous program.


On January 20, 2009, Edwards wrote a \$3,681.09 check from the previous diversion program's account to the local trap team for junior and senior high school trapshooters. Edwards was affiliated with the trap team, and that same day the team issued him a check for \$981.03 that indicated it was for "knives, shells 09 season reimb." A state audit found that Edwards was paid \$7,257.11 in excess of his salary and had made \$18,989.04 worth of payments not authorized by the county board from the previous diversion program's account.

He was charged on September 19, 2011 with multiple counts of theft, income tax evasion and filing a false income tax return. The income tax-related charges were dismissed, and at trial in August 2012 the jury found him not guilty of two theft charges related to \$2,850 in checks written to his wife for work with the diversion program, but guilty of theft for the check to the trap team. He was sentenced to 90 days

in jail, 1,200 hours of community service, nine months on house arrest, almost \$3,700 in restitution and three years of probation. Edwards' law license was suspended in September 2012.

On appeal, the Supreme Court of Nebraska held on August 2, 2013 that an improper jury instruction had implicated both the presumption of innocence and the state's burden to prove guilt beyond a reasonable doubt. Accordingly, due to plain error regarding the jury instruction,

Edwards' conviction was reversed and the case remanded for a new trial. See: *State v. Edwards*, 286 Neb. 404, 837 N.W.2d 81 (Neb. 2013).

Following remand, Edwards entered into a plea agreement and was sentenced in February 2014 to thirty days in jail and a \$500 fine. 

Additional sources: [www.granttribune.com](http://www.granttribune.com), [www.knopnews2.com](http://www.knopnews2.com), *North Platte Bulletin*, [www.watchdog.org](http://www.watchdog.org)

## Seventh Circuit: Jail Social Worker Ignored Detainee's Suicide Risk

ON AUGUST 12, 2013, THE SEVENTH Circuit Court of Appeals held that a jail social worker could be held liable for ignoring a detainee's obvious risk of committing suicide.

Algerian citizen Hassiba Belbachir, 27, entered the United States as a visitor in November 2004. She overstayed her visa then flew from Chicago to England in February 2005, where she was detained by immigration authorities.

Belbachir was returned to Chicago a week later. On March 9, 2005, she was incarcerated at the McHenry County Jail in Illinois pending a deportation hearing.

A March 9, 2005 intake report did not reveal indications that Belbachir presented a significant suicide risk – in part because a "guard who filled out the intake report changed Belbachir's answer 'yes' to the question 'Are you currently extremely depressed or feeling suicidal?' to 'no,'" subsequently claiming he had made a mistake.

Five days later, Belbachir's mental state had deteriorated significantly.

"Belbachir was suicidal and suffering from a 'major depressive disorder' – a warning sign for suicide," according to the mental health progress notes of Vicki Frederick, a Licensed Clinical Social Worker employed by Centegra Health Systems, the jail's medical care provider.

Frederick's progress notes stated that Belbachir was "sobbing throughout" a

March 14, 2005 interview and had said, "I'd rather die than live like this." She also admitted to drinking soap before entering the jail and reported several other alarming suicide warning signs.

Nevertheless, Frederick ignored Belbachir's obvious risk of suicide, did not alert any other staff of that risk and neither Frederick nor any other jail medical staff had any further contact with Belbachir. Three days later, she strangled herself to death with her socks.

Belbachir's estate filed a federal lawsuit against numerous county and Centegra officials, alleging that they deprived Belbachir of her life without due process of law by ignoring her risk of suicide. The district court granted summary judgment to the defendants.

The Seventh Circuit reversed the judgment as to Frederick, finding that "the risk of suicide was obvious" to her, yet she "decided that Belbachir was not suicidal" and "failed to tell the guards to put her on suicide watch."

The Court of Appeals initially noted that "Although Centegra's employees are not public employees, they rightly do not deny that in performing functions that would otherwise be performed by public employees, they were acting under color of state law and therefore could be sued under section 1983."

Additionally, "Immigration authori-

ties, who monitor the jail's treatment of its federal prisoners, rated the jail's suicide-prevention policy 'deficient' in 2002," but "rated it acceptable in both 2003 and ... 2004." Soon after Belbachir's suicide, however, "immigration authorities, in what may be an example of hindsight bias, found fault with the jail's suicide prevention policies,"

the appellate court wrote.

"Even if the sheriff was culpable for failing to discover and correct the deficiencies," the Seventh Circuit found the county could not be held liable because "there is no evidence that correcting them before Belbachir arrived at the jail would have prevented her suicide." The district court's

order was reversed as to the judgment entered in favor of Frederick. See: *Belbachir v. County of McHenry*, 726 F.3d 975 (7th Cir. 2013).

Following remand, the Centegra defendants – the only defendants remaining – agreed to settle the case in May 2014 under confidential terms. ■

## Mandamus Petition May Constitute Prison Conditions Litigation in Pennsylvania

by David M. Reutter

**T**HE SUPREME COURT OF PENNSYLVANIA held on July 9, 2013 that a mandamus petition related to an underlying complaint concerning prison conditions itself constitutes prison conditions litigation within the meaning of the state's Prison Litigation Reform Act (PLRA), 42 Pa.C.S. § 6602(f).

SCI-Graterford prisoner Alton D. Brown is, according to the state Supreme Court, "a frequent filer of frivolous litigation in the Commonwealth and federal courts." There was no dispute that he had already run afoul of the "three-strikes-and-you're-out policy" codified in the federal and Pennsylvania PLRA statutes when he attempted to file a complaint in Montgomery County alleging civil rights violations.

His complaint was rejected three times by the Montgomery County Prothonotary for failure to provide the names and addresses of all named defendants. When Brown filed a mandamus petition to force the acceptance of his complaint, the Prothonotary moved to dismiss under the PLRA's three-strikes rule. The trial court granted the motion and the Commonwealth Court affirmed on appeal.

Brown then filed another civil action against prison officials for inadequate medical care and other conduct that he alleged violated his constitutional rights. The Prothonotary again refused to file the complaint under the three-strikes rule, Brown filed another mandamus petition and the Prothonotary moved to dismiss. The trial court granted the motion to dismiss, but the

Commonwealth Court reversed on grounds that the Prothonotary had no authority to refuse to file Brown's complaint.

The Pennsylvania Supreme Court agreed with the Prothonotary that a petition for writ of mandamus may constitute prison conditions litigation and thus be subject to the PLRA's three-strikes rule if the subject matter of the underlying complaint relates to prison conditions. The Commonwealth Court's ruling was therefore reversed. See: *Brown v. Levy*, 73 A.3d 514 (Pa. 2013). ■

## LET US HELP GET YOU HOME!

D&D Worldwide Services LLC, is an Inmate Service Provider, staffed with top notched Paralegals. We are a team of Christian Professional Consultants with over 14 years' experience with the parole system. We create detailed parole plans and provide parole plan documentation services worldwide. When building your case, we focus on showing you to be a favorable candidate for the privilege of parole!

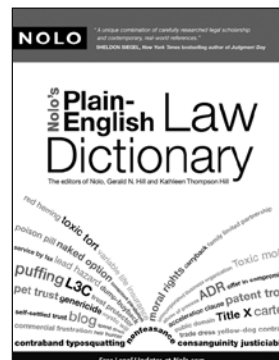
**Full Service (Texas Only)** - Services are provided UNTIL an approval is granted or you are released from prison. Service fee is \$800.00

**Standard Service (Worldwide)** - Our standard parole plan is approved in ALL STATES where parole is available. Send SASE for a processing form. Service fee is \$200.00

*Although the Prison system may only see Prison Numbers... We see "Faces" with "Names" with "Loving families" – "We See People!" Let us help get you home!*

### D&D Worldwide Services, LLC

12337 Jones Rd # 408 Houston, TX 77070  
P.O. Box 40081; Houston, TX 77240  
Office: (281) 580-8844  
Website: [www.myparole.info](http://www.myparole.info)



### Nolo's Plain-English Law Dictionary

\$29.99

Order from

### Prison Legal News

P.O. Box 1151  
Lake Worth, FL 33460  
561-360-2523  
Add \$6 shipping for orders under \$50

[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

## For Sale: New York Lakefront Property with Garage, Pig Farm and 736 Prison Cells

**W**HAT NEW YORK STATE IS DOING with some of its closed prisons is like dragging an old, unwanted couch out to the dumpster and then slapping a price tag on it.

In an effort to address state budget gaps, Governor Andrew Cuomo's administration closed seven of New York's 67 correctional facilities and put them on the real estate market in 2012. [See: *PLN*, June 2013, p.1].

"Instead of spending millions maintaining facilities we don't need, the governor's approach saves taxpayers millions and opens up transformative economic development and investment opportunities in communities across the state," said Howard B. Glaser, Cuomo's director of state operations.

Nearly a dozen prisons have been closed in New York in recent years thanks to lower crime rates, early release programs for nonviolent offenders and reforms in the state's strict Rockefeller drug laws. In fact, since 1999, when New York incarcerated an all-time high of almost 71,500 prisoners, the Empire State's prison population has fallen nearly 25%, leaving thousands of empty beds when Governor Cuomo announced the sale of the idle correctional facilities. New York's prison population is currently around 54,000 prisoners.

One of the vacant facilities, tucked away in the Hudson Valley, has a 16-car garage, a pig farm, hundreds of yards of lakefront property and 736 "bedrooms" with bathrooms. Another prison, off the western shore of Staten Island, offers a two-story gymnasium, a baseball field, an open-air pavilion and almost 70 acres on the waterfront. And in rural Schoharie County, a prison is for sale that includes a chapel, a carpentry shop, 20 acres of state forest land that's ideal for hunting and fishing, and a wastewater treatment plant.

"It's a building that's just sitting there," said Harold Vroman, chairman of the board of supervisors for Schoharie County, where the state closed a 100-bed minimum-security facility. "Who wants to buy a jail, you know?" he asked.

Apparently, someone does. Governor Cuomo's administration said it was reviewing a proposal for a new retail development

on Staten Island to replace the Arthur Kill Correctional Facility, one of the closed prisons. Further, Camp Georgetown, a former 262-bed prison that sits on 31 acres in central New York, sold for \$241,000 in May 2013. The new owners plan to convert it into a youth science camp. In the Hudson Valley, the former Mid-Orange Correctional Facility is slated to become an industrial and business park after selling for \$3.1 million.

In January 2014, state officials re-issued a request for proposals for the purchase and reuse of the former Bayview Correctional Facility, a medium-security women's prison that sits on prime real estate on Manhattan's West Side. The prison closed in October 2012 after being damaged by Hurricane Sandy.

An eight-story brick building at Bayview, which was originally designed as a YMCA center, includes a large gymnasium, an art deco pool that was used for storage and a small chapel with stained-glass windows. The prison also includes a six-story annex. Cell windows on the waterfront side of the property gaze out over the Hudson River Park.

Some real estate experts said Bayview could be worth significantly more if the state would allow it to be sold for residential use or as a hotel. The site would be perfect for condos, according to developers, but the Cuomo administration has refused to accept bids for residential uses in an effort to promote job growth and ensure the desires of neighborhood residents are respected when the facility is sold.

"The state's going to leave a significant amount of money on the table by dictating the use" of the former prison, said Dan Fasulo, a managing director at Real Capital Analytics. "I think they're going to be surprised at how low the bids are."

Other states that have closed correctional facilities have converted them into properties with alternative uses. For example, the old Charles Street Jail in Boston was transformed into the Liberty Hotel in 2007; one of the hotel's bars, named Alibi, serves a \$12 blueberry mojito called the "Jailbait." In Newark, New Jersey, the cells were removed from a former county jail so the building could be turned into govern-

ment office space. A number of states have converted closed prisons into museums or tourist attractions. [See: *PLN*, Aug. 1998, p.24].

Jails are easier to convert to other uses than prisons because they're usually smaller and more centrally located. For those reasons, real estate experts say, New York might be better off just giving away its unneeded prisons.

"The only possible thing that you could use this for would be for government or military," said Fred Macchia, a commercial real estate broker in Rome, New York, where the 998-bed Oneida Correctional Facility was closed several years ago. "You couldn't make it into a hotel. You couldn't make it into an apartment complex. You're talking millions of dollars to renovate."

More New York prisons may be on the market soon, as the state announced the closure of four additional correctional facilities in July 2013.

"In response to a reduced crime rate that has shrunk our inmate population, we are continuing to right size the state's costly prison system and saving taxpayers tens of millions of dollars annually," said New York state prison Commissioner Anthony J. Annucci.

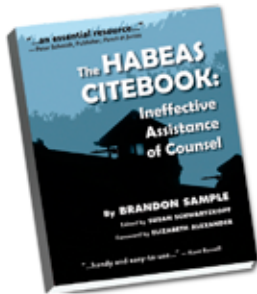
Local residents and unionized prison workers have rallied against closing the facilities, however, citing job losses and the economic impact the closures would have on the communities where they are located. The four state prisons scheduled to close by mid-2014 include Monterey Shock, Butler, Chateaugay and Mt. McGregor.

New York lawmakers have halted any further prison closures until July 2016 – after all, they wouldn't want to glut the prison real estate market. ■

Sources: *The New York Times*, *Wall Street Journal*, [www.correctionalassociation.org](http://www.correctionalassociation.org), [www.wptz.com](http://www.wptz.com), [www.scoc.ny.gov](http://www.scoc.ny.gov)

### **Roget's Thesaurus**

Can't think of the right word?  
Let Roget's help you! Over 11,000  
words listed alphabetically.  
See page 61 for more information.



## The Habeas Citebook: Ineffective Assistance of Counsel

**\$49.95**

Brandon Sample

ISBN: 978-0-9819385-1-6

Paperback, 224 pages

The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an invaluable resource that identifies hundreds of cases where the federal courts have granted habeas relief to prisoners whose attorneys provided ineffective assistance of counsel.



## Prisoners' Guerrilla Handbook to Correspondence Programs in the United States and Canada, 3rd Edition

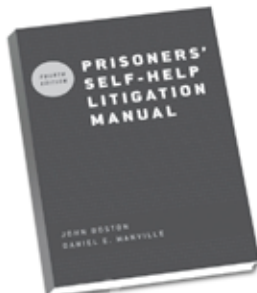
**\$49.95**

Jon Marc Taylor

ISBN: 978-0-9819385-0-9

Paperback, 224 Pages

The greatly anticipated and newly updated third edition of the Prisoner's Guerrilla Handbook to Correspondence Programs in the United States and Canada has finally arrived! Author Jon Marc Taylor's brand new version is the latest in this unique and highly successful guidebook for the prisoner-student. This invaluable tool and how-to handbook provides the reader with step-by-step instructions to find the appropriate education program for correspondence high school, vocational, paralegal, undergraduate, and graduate courses offered in the U.S. and Canada today.



## Prisoners' Self-Help Litigation Manual, 4th Edition

**\$45.95**

John Boston & Dan Manville

ISBN: 978-0-1953744-0-7

Paperback, 960 pages

Prisoners' Self-Help Litigation Manual, in its much-anticipated fourth edition, is an indispensable guide for prisoner litigants and prisoner advocates seeking to understand the rights guaranteed to prisoners by law and how to protect those rights. Clear, comprehensive, practical advice provides prisoners with everything they need to know on conditions of confinement, civil liberties in prison, procedural due process, the legal system, how to actually litigate, conducting effective legal research, and writing legal documents. It is a roadmap on how to win lawsuits.

- ☐ Habeas Citebook,  
Ineffective Assistance of Counsel  
\$49.95
- ☐ Prisoners' Guerrilla Guide to  
Correspondence Programs  
3rd edition  
\$49.95
- ☐ Prisoners' Self-Help  
Litigation Manual  
4th edition  
\$45.95

**Shipping included in all prices**

**Order by mail, phone, or on-line.** Amount enclosed \_\_\_\_\_

By: ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_ ZIP \_\_\_\_\_

PUBLISHED BY

**PRISON LEGAL NEWS**  
Dedicated to Protecting Human Rights

PO Box 1151 • Lake Worth, FL 33460  
Tel 561-360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)



## News in Brief

**Arizona:** Former state prison guard Robert Joseph Hamm, 34, was sentenced on September 9, 2013 to 11 years in prison for having a sexual relationship with a Tucson teenager. He had previously served a year in prison after pleading guilty in 2011 to having sex with the same girl, who was then 14 years old. [See: *PLN*, Feb. 2012 p.50]. Eight years of the 11-year sentence were for Hamm's violation of his probation in the 2011 case. The girl's parents had alerted the police after finding a diary describing her encounters with Hamm.

**Arkansas:** Faulkner County jailers Seth Ferguson and Christy Jordan were fired on September 22, 2013 after officials found they had failed to check the recreation yard every 30 minutes as required by jail policy on the day three prisoners escaped. A spokesperson for the sheriff's office said the two guards had been employed by the county for almost two years. Although the prisoners were later recaptured, Ferguson and Jordan failed to notice they were missing for at least 30 minutes.

**California:** On October 4, 2013, Timothy Michael Russell was found dead in his cell at San Quentin State Prison, the victim of an apparent suicide. Russell was on death row for murdering two Riverside County sheriff's deputies in 1997; deputies James Lehmann, Jr. and Michael Haugen were gunned down while responding to a domestic violence call at Russell's residence. He had been on death row for 14 years.

**Cambodia:** On October 10, 2013,

floods from the Mekong River forced the evacuation of 842 prisoners at a provincial prison in Banteay Meanchey. In some places in the prison complex the water reached levels as high as prisoners' necks, and part of the facility's outer wall collapsed. Flooding is common in Cambodia between August and October; in addition to the prisoners, around 22,000 families were evacuated.

**Connecticut:** Prisoner Howard Cosby, serving 19½ years at the Corrigan-Radgowski Correctional Center, enlisted the help of People for the Ethical Treatment of Animals (PETA) in his efforts to receive a vegetarian diet as required by his Buddhist faith. Prison officials, who did not consider fish to be meat, had been serving Cosby seafood three times a week. In late September 2013, PETA received a letter from Deputy Warden Giuliana Mudano stating the prison would provide a nutritionally-adequate vegetarian substitute for Cosby whenever fish appeared on the menu.

**Costa Rica:** Costa Rican jails are overpopulated by 40% on average, and a San José judge, Roy Murillo, ordered that 370 prisoners at San Sebastian Prison be relocated or released because "overcrowding is unlawful and contrary to human dignity." Following the September 24, 2013 ruling, the Justice Ministry began transferring prisoners to other facilities. Justice Carlos Chinchilla, president of the Penal Chamber of the Supreme Court, had publicly criticized Murillo's order; however, the Supreme Court declined to review the case.

**Delaware:** On September 18, 2013, Vasilios Hantzopoulos, 47, a security officer employed by the Capitol Police, turned himself in to face charges of official misconduct and sexual relations in a detention facility. He is accused of having sex with a female prisoner in a holding area of the New Castle County courthouse in August 2013. The Delaware State Police had investigated

the incident, resulting in the charges.

**Florida:** Joseph Jenkins and Charles Walker were captured on October 19, 2013 following their mistaken release from prison due to falsified court documents. The two convicted murderers were found at a Panama City motel and rearrested without incident. They were both serving life sentences, but participated in a forgery scheme that reduced their sentences to 15 years. *PLN* managing editor Alex Friedmann was quoted in the *Orlando Sentinel* regarding the escape, saying, "As we incarcerate more people for life, we have to realize these people have nothing to lose."

**Florida:** On October 10, 2013, Andre Darnell Burgess, 28, was described as "suicidal" following his disciplinary suspension for "conduct unbecoming" at his job at the Florida DOC's Madison Correctional Facility. In a bizarre series of events, Burgess led troopers on a 30-mile high speed chase after his wife called police and accused him of getting drunk and then tackling and choking her. Trooper Ronald Evans discovered an intoxicated Burgess slumped over the steering wheel of his wrecked vehicle; Burgess drove away and was finally stopped after police bumped his car and it lost a rear wheel. He continued to fight while being arrested and booked, and was eventually placed in a restraint chair and spit hood. He faces numerous charges.

**Illinois:** Tony Henderson, 51, worked as a jail guard at the Metropolitan Correctional Center (MCC) for 16 years. On October 7, 2013, he showed no emotion when he learned he had to spend two years on the other side of the bars. Henderson was convicted of smuggling cigarettes and food into the MCC for bribes of up to \$10,000. Judge Edmond Chang further ordered him to pay a \$5,000 fine, saying Henderson had committed a "very serious breach of the public trust in a highly sensitive situation." Henderson declined to address the court at his sentencing.

**Illinois:** On October 30, 2013, Michael Hart, a Skokie police officer, was charged with aggravated battery and official misconduct, both felonies, for shoving Cassandra Feuerstein into a jail cell after becoming irate with her during the booking process. Hart's forceful shove caused Feuerstein's head and face to slam into a concrete bench, fracturing her right orbital bone, opening a deep cut on her cheek and

**Photo Tryst**  
PO Box 103  
Chapmansboro TN 37035

**Quality Pics of Quality**  
**Babes**

All catalogs 450 full color pics  
Summer 2013 free with SASE  
All other catalogs \$4 or 10 forever stamps, and ship with  
a coupon for 5 free pics with your minimum order of 10

Winter 2014 Spring 2014 Topless #1 (contains frontal  
Nudity) All Nude #1 (you see it all)

Our next general (season) catalog free with each order  
You can deposit funds with us and order your pics "on account"  
We accept institutional checks, personal checks from  
friends and family, and money orders  
Stamp orders are only with stamp coupons obtained with  
regular orders  
Oregon and Utah consistently deny our catalogs so we cannot  
do business there. Sorry

loosening several of her teeth. Feuerstein, who had been arrested for drunk driving, is pursuing a civil suit that further claims Hart filed a false report to cover up the incident. Hart resigned from his job in November 2013 and has pleaded not guilty to the criminal charges.

**Indiana:** A man who escaped from the federal prison camp in Marion, Illinois in October 2000 is headed back to prison. Donald E. Bruce, 75, was deemed suspicious by an Oakland City police officer, and a background check revealed he was an escapee. When confronted, Bruce acknowledged that he had escaped, but said he wanted to spend time with family members before turning himself in. He had over nine years remaining on his initial prison sentence for a meth distribution conspiracy. He pleaded guilty to the escape charge in September 2013 and faces more prison time.

**Iowa:** On November 8, 2013, Chief Deputy Don Phillips of the Wapello County Sheriff's Office was among the witnesses at the second trial of former jail guard Seth Techel, accused of the shooting death of his pregnant wife, Lisa Techel, and her unborn child. Phillips testified about his interview with a former neighbor of the Techels who had complained about the sheriff's office's failure to investigate reports of vandalism on his property. Techel's defense attorneys argued that the neighbor, Brian Tate, who died in September 2012, was a more likely suspect in the case. Techel's first trial, held in March 2013, ended in a mistrial; the second trial also resulted in a mistrial and a third trial is scheduled for July 14, 2014.

**Kansas:** In September 2013, Harlan Hurst, a convicted burglar, was the first person featured on a Facebook page for missing parolees maintained by the Kansas Department of Corrections. Officials hope that social media will help find people who abscond while on parole. Each week the Kansas DOC will post information about one of approximately 170 parolees who are on the run; spokesman Jeremy Barclay said Facebook was a useful tool for locating parole violators.

**Maryland:** A deputy sheriff and a jail guard from Prince George's County were indicted on October 10, 2013 for beating a prisoner who was being processed into the county jail. At one point they forced the prisoner into a search room to continue the assault, closing the door in an attempt to conceal the beating. Deputy George Rogers and jail guard David Nkemtitah were both charged with misconduct in office; Rogers also faces a charge of second-degree assault.

**Mexico:** *PLN* has frequently reported on violence in prisons in Mexico, and on October 26, 2013, Mexican officials released information on yet another incident. Seven prisoners died in a riot at a facility in the Gulf Coast city of Altamira, about 300 miles south of Brownsville, Texas. Nine prisoners who used makeshift knives to kill the victims and injure two other prisoners were accused of starting the riot.

**Michigan:** On October 30, 2013, Jonathan Kermeen, a nine-year employee of the Ottawa County Jail, was suspended following accusations of inappropriate sexual contact with two female prisoners. He was

fired in November 2013, then arrested and charged with two counts of second-degree criminal sexual conduct. Over the course of several months, Kermeen called the victims out of their cells and kissed and fondled them. He told investigators that he stopped the inappropriate contact after he believed someone had witnessed the incidents. Kermeen pleaded guilty to the charges and was sentenced on March 10, 2014 to 5-15 years in prison.

**Missouri:** Keith Conway, 49, the former mayor of Kinloch, submitted falsified pay stubs to get out of a halfway house where he was living after serving time in federal prison. He pleaded guilty and was sentenced on December 16, 2013 to six months for the fraud. In 2011, Conway had received 21 months in prison for spending city money on a \$9,000 delinquent federal tax bill. He also used the stolen funds to pay personal utility bills and buy plane tickets, Caribbean cruises and train trips.

**Montana:** Judith A. Bird, who worked as a counselor at the Montana State Prison at Deer Lodge, was publicly reprimanded by the Board of Social Workers and Professional Counselors on November 7, 2013 for shredding prisoners' mental health requests without responding to them, and for disclosing confidential information about prisoners without their consent. Bird had been fired in March 2012 following an internal investigation conducted by the Montana DOC; she told prison officials that she had responded to the mental health requests verbally. In addition to the reprimand, she was ordered to complete



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription!

Quarterly drawing WINS \$100! (Void in New York)  
(Last Quarter's winner from Airway Heights, WA.)

**TELL YOUR FRIENDS! ACT NOW!!**



**PO Box 2063 • Fort Walton Beach FL. 32549**

**[www.InmateMagazineService.com](http://www.InmateMagazineService.com)**

## **Inmate Magazine Service**

## News In Brief (cont.)

remedial education classes on ethics.

**Nevada:** An unnamed prisoner who was receiving medical treatment at St. Mary's Regional Medical Center was shot and injured by a Washoe County sheriff's deputy on October 20, 2013. The deputy was also injured in the incident but the reason for the shooting was not disclosed. As per protocol for an officer-involved shooting, an outside agency – the Sparks Police Department in this case – will conduct an investigation.

**New Jersey:** Members of the New Jersey Law Enforcement Supervisors Association announced on October 26, 2013 that a "majority" of prisoners at Bayside State Prison in Maurice River Township were reportedly staging a hunger strike to protest sub-par food served by private contractor Aramark. New Jersey DOC spokesman Matthew Schuman refused

to confirm the hunger strike, but said the department plans to address the prisoners' grievances. According to Aramark's website, the company provides food services at more than 500 correctional facilities.

**Ohio:** On October 25, 2013, Michelle Vining, a former guard at the Lucas County jail, pleaded guilty to two counts of dereliction of duty, a second-degree misdemeanor. Her plea agreement, in which she received probation, agreed to resign from her job and forfeited her sport utility vehicle, included the dismissal of felony charges for aggravated trafficking in drugs and illegal conveyance of drugs into a government facility. Also charged were former prisoners Jesse Perez and Salina Perez. Both were scheduled to appear in court, but Jesse Perez failed to appear after posting bond and a warrant was issued for his arrest.

**Ohio:** A prison guard has resigned after the Ohio Department of Rehabilitation and Correction found falsified logs

that purported to document security checks on death row prisoner Billy Slagle, who committed suicide in his cell on August 3, 2013 – just three days before his scheduled execution. [See: *PLN*, March 2014, p.56]. No charges are planned against 19-year-old former guard Clay Putnam. Another unnamed guard was placed on leave while the state investigates discrepancies in an electronic log that documented how often checks were performed on Slagle prior to his suicide. Cuyahoga County prosecutor Tim McGinty had supported Slagle's request for clemency, which was rejected by the parole board and governor.

**Oklahoma:** On September 24, 2013, eight prisoners escaped in a transport van when guards left the keys in the vehicle while they took a sick prisoner to a hospital. Six of the prisoners stayed with the van once they stopped after driving about a mile, and one of those prisoners called 911 to report the escape. The other two,

## PLN Classifieds

### ASMILE CONNECTION GIVE AWAY!!!

Receive your horoscope daily starting today! Add our e-mail address to your contact list!  
horoscope@asmileconnection.com

### IMATE SPORTS LINES + NEWS

Emailed to you daily  
INFO@forthescoop.com  
PO BOX 90594  
San Antonio, TX 78209

### Best 2014 Cite Book Available

Barkanresearch.com has "Colossal Book of Criminal Citations" just \$19.95 2500+ cites & more. View sample content and order today!

### NUBIAN PRINCESS ENT Est 1998 18+

Facebook.com/chanail.paree  
\$25 Erotic letters 4 inmates from Chanail! \$27 ur pic&contact gets u on F/B \$5 or 20 stamps 4 photo catalog Cks/MO's Full Book FCFS or SASE to Nubian Princess Ent. POB 37, Timmonsville, SC 29161

### FREE & SUPER LOW COST SERVICES!

Pen Pal listing, photo copies, e-greeting cards, freak pics, special requests & more. No SASE Referral Program/Stamps accepted  
V.I.Prisoners, P.O. Box 1052,  
Allen Park, MI 48101  
Email: viprisoners@gmail.com

### AMBLER DOCUMENT PROCESSING

Type, Design and Prepare Manuscripts for Self-Publishing Reasonable Rates! Accept all Genres!  
P.O. Box 938, Norwalk, CT 06852

### Free facebook & instagram setup

People searches, release shopping Amazon books, book editing, photo Duplications, flower & gift, drivers license & state case legal research  
Viprisonersservices@gmail.com  
P.O. Box 584609, Kissimmee, FL 34749  
(863) 496-1862 for info or email

### CONNECT TO OUTSIDE WORLD!

PP provides services via internet Your information - social networks  
10 sites 20 US, 20 sites 30 US  
Free Brochure  
PRISONER PROMOTIONS  
2355 Fairview Ave #214  
Roseville, MN 55113

### The VOICES.CON Newsletter – Free

Written by lifers for lifers. For info on how to receive Voices.Con monthly, send SASE to: PO Box 361, King City, CA 93930.  
On the web at: VoicesDotCon.org;  
Email: Publisher@VoicesDotCon.org

### Inmate Services! E-mail, Legal

ads/Walmart Release Clothing? Send SASE to:  
Morris Inmate Serv. PO Box 6184, Martinsburg, WV 25402

### INMATE PHOTO SERVICE

Mail your photo to us  
We scan and email your Photo to family + friends  
INFO@forthescoop.com  
PO BOX 90594  
San Antonio, TX 78209

### IF YOU WANT THE BEST TRY EPS!

Legal Research & Forms, Internet & People Searches, Amazon Books, Erotic Photos & Stories, PenPals, Special Requests and Much More.  
Send SASE to: Elite Paralegal & Prisoner Services, PO Box 1717, Appleton, WI 54912

Lester Burns and Michael Coleman, ran but were quickly recaptured. The van was being operated by Prisoner Transportation Services, a private firm based in Nashville, Tennessee. The company declined to comment on the incident.

**Pennsylvania:** A dispute with a guard over toilet paper led to aggravated assault charges against Dauphin County prisoner Sakeem Lamar Gray, 21. On September 30, 2013, Gray had toilet paper hanging in his cell in violation of prison rules. When Gray ignored a guard's order to take down the paper, the guard entered the cell and removed it himself. Gray then attacked the guard and bit him on the arm. According to court records, Gray, who is required to take medication, was serving time for a previous aggravated assault charge.

**Pennsylvania:** Convicted rapist Omar Best, 36, was charged in October 2013 for

attacking a 24-year-old civilian prison clerk and raping and choking her unconscious in her office at SCI-Rockview. The clerk, Belinda Croft, blew an emergency whistle but guards did not respond; officials gave no explanation for a 27-minute delay before Croft was found by other staff members, but a guards' organization blamed understaffing for the incident. The all-female clerical staff was subsequently moved from the prisoner housing unit to an administrative section of the facility. In April 2014, Croft filed a federal lawsuit against the Department of Corrections; Best was convicted of rape and assault on May 20, 2014 and is scheduled to be sentenced in August.

**Tennessee:** On October 24, 2013, *Courthouse News Service* reported that Shirley Vineyard, 61, had filed suit against Knox County Sheriff Jimmy Jones and guards at the Knox County Detention Center for fail-

ing to help as she was beaten with her own cane by another jail visitor. The incident, which was captured on video surveillance cameras, occurred as Vineyard visited her son at the jail on January 2, 2013. Anna Sharday Nicole Caswell, who was not named in the lawsuit, attacked Vineyard after claiming that she was in her "spot" at the visiting booths. Jail officials did not intervene to stop the assault and subsequently refused Vineyard's request for an ambulance.

**Texas:** In September 2013, McLennan County sheriff's deputies arrested Regina Antoinette Edwards and Dorothy Pennington, both guards at the privately-operated Jack Harwell Detention Center, for engaging in sexual misconduct with prisoners. The incidents, which were discovered on recorded cell phone calls, allegedly occurred between 2011 and 2013. Pennington pleaded guilty to a charge of improper sexual activity and was

#### **THE CELL BLOCK PRESENTS...**

The Best Resource Directory for Prisoners \$20, The Art & Power of Letter Writing for Prisoners \$7, The Enemy of The State \$10, & other books prisoners love!!!  
For FREE info/flier, send SASE: TCB; POB 212; Folsom, CA 95763

#### **Claudette Peters, Exec.**

P.O. Box 3269  
New York, New York, 10163-3269  
All types of Legal Services  
Inexpensive, from all areas of law, information on anything.  
Specializing in all prison litigations/civil and criminal.

#### **GET PUBLISHED, \$ FOR SCHOOL**

Inmate anthology seeks authors & cover artist. Send up to 2 poems (must be signed) & 1 prose piece (10pg max) & cover art to NFC, 1957 W Burnside #1660, Port OR 97209 by July 15. Published authors will earn \$ for NFC classes

#### **MIDNIGHT EXPRESS BOOKS**

THE PREFERRED & ONLY FULL TIME company helping inmate authors publish books for 10+ years.  
PO Box 69, Dept PLN,  
Berryville, AR 72616  
Midnightexpressbooks.com  
Corrlinks: MEBooks1@yahoo.com

#### **FREE BOOK CATALOG & PRAYER CARD**

Send \$1 for S&H or  
SASE w/2 (two) US Forever Stamps  
Fiction, Nonfiction, Dictionary,  
Pastimes & Religious books  
English & Spanish.  
Jaguar Books 6881 Stanton Ave #F  
Buena Park CA 90621

#### **Education Behind Bars Newsletter**

Free electronic newsletter  
For prisoners viaCorrLinks.  
Add news@prisonlawblog.com  
to subscribe. The content  
is curated specifically  
for prisoners.

#### **SURROGATE SISTERS**

Celebrating 18+Years in Business  
No Games. We Sell Photos of Sexy  
Women, Gifts for Loved Ones,  
Erotic Stories & Pen-Pal Service  
Free Info & Flyer Send SASE to:  
Surrogate Sister - PN  
PO Box 95043, Las Vegas NV 89193

#### **Prisonerinmatefamilyservice.com**

Send a SASE for a free catalog;  
PO Box 1852 Pismo Beach, CA 93448  
We buy stamps- 7.50 a book;  
Single stamps .25 cents; Amazon  
Orders, copies of photos/artwork  
And SO much more!  
FamilyInmateSev@aol.com

#### **LOCAL PHONE NUMBERS \$2.50/MO.**

USA anywhere 5¢/min. To MX 15¢  
Great rates all over the world!  
No signup fee, no hidden fees!  
Refer new cust, 300 free mins!  
[www.FreedomLine.net](http://www.FreedomLine.net) to sign up  
or write FreedomLine, Box 7-WCB  
C'ville IN 47331. Save BIG \$\$\$!

#### **\*\*Bottle Thoughts Gift Store\*\***

Show someone you are thinking of  
them by sending a Special Gift  
Send SASE for FREE Brochure  
PO Box 110752 Carrollton TX 75011  
Corrlinks:sales@bottlethoughts.com  
Contact us 1-877-705-0425  
FREE Shipping on All Gift Orders

#### **Celebrity Photos For Sale:**

Send self addressed stamped  
envelope for lists. Name stars  
you would like to order photos of.  
Start your collection today!  
Photoworld-PLN  
PO Box 401016  
Las Vegas, NV. 89140

#### **How to get girls while in prison**

"The best techniques & methods to  
get more girls than u can handle  
even though u are locked up."  
Send SASE for your free report:  
The Convict's Education Group  
19141 Stone Oak Pkwy #104  
Dept.: A. San Antonio, TX 78258



sentenced to five years' probation in January 2014. A third guard, Sherry Lynn Haynes, has been charged with smuggling cigarettes into the facility.

**Texas:** Retired state district judge Terrill L. Flenniken was sued by the Texas Center for Defense of Life, an anti-abortion group, for ordering a 15-year-old girl to continue residing with her grandmother and the grandmother's boyfriend, convicted sex offender Edward Clinton Lee. The suit,

filed on October 8, 2013, claims that the couple was trying to force the girl to have an abortion after she became pregnant by her teenage boyfriend, and that the placement with her grandmother was improper because Lee was making sexual advances toward the girl. Three school officials, also named in the lawsuit, were criminally charged after they failed to report the girl was being sexually abused. Six months after Judge Flenniken's placement ruling, Lee sexually assaulted the girl and shot and killed her grandmother. Flenniken retired from the bench in December 2012; Lee

pleaded guilty to rape and murder charges and is serving life without parole.

**Texas:** On September 27, 2013, Jose Rodriguez, 37, ran from the Nueces County Courthouse while being moved to the jail. He first tried to carjack a utility truck but the driver fought back. Next, while TV news crews videotaped, Rodriguez jumped behind the wheel of a police cruiser, found the keys were not in the ignition, then jumped out and headed for another police car. He locked the doors to keep officers out, but they broke the windows. Rodriguez now faces a long list of charges. ■

## **Criminal Justice Resources**

### **ACLU National Prison Project**

Handles state and federal conditions of confinement claims affecting large numbers of prisoners. Publishes the NPP Journal (available online at: [www.aclu.org/national-prison-project-journal-fall-2011](http://www.aclu.org/national-prison-project-journal-fall-2011)) and the Prisoners' Assistance Directory (write for more information). Contact: ACLU NPP, 915 15th St. NW, 7th Fl., Washington, DC 20005 (202) 393-4930. [www.aclu.org/prisons](http://www.aclu.org/prisons)

### **Amnesty International**

Compiles information about prisoner torture, beatings, rape, etc. to include in reports about U.S. prison conditions; also works on death penalty issues. Contact: Amnesty International, 5 Penn Plaza, New York NY 10001 (212) 807-8400. [www.amnestyusa.org](http://www.amnestyusa.org)

### **Center for Health Justice**

Formerly CorrectHELP. Provides information related to HIV in prison – contact them if you are not receiving proper HIV medication or are denied access to programs due to HIV status. Contact: CHJ, 900 Avila Street, Suite 102, Los Angeles, CA 90012. HIV Hotline: (214) 229-0979 (collect calls from prisoners OK). [www.centerforhealthjustice.org](http://www.centerforhealthjustice.org)

### **Centurion Ministries**

Works to exonerate the wrongfully convicted, in both cases involving DNA evidence and those that do not. Centurion only takes 1-2 new cases a year involving actual innocence. They do not consider accidental death or self-defense murder cases, he said/she said rape cases, or child abuse or child sex abuse cases unless there is physical evidence. All case inquiries must be from the prisoner involved, in writing. Contact: Centurion Ministries, 221 Witherspoon Street, Princeton, NJ 08542 (609) 921-0334. [www.centurionministries.org](http://www.centurionministries.org)

### **Critical Resistance**

Seeks to build an international movement to abolish the Prison Industrial Complex, with offices in Florida, California, New York, Texas and Louisiana. Publishes The Abolitionist newsletter. Contact: Critical Resistance, 1904 Franklin Street #504, Oakland, CA 94612 (510) 444-0484. [www.criticalresistance.org](http://www.criticalresistance.org)

### **The Exoneration Project**

The Exoneration Project is a non-profit organization dedicated to working to free prisoners who were wrongfully convicted. The Project represents innocent individuals in post-conviction legal proceedings; typical cases involve DNA testing, coerced confessions, police misconduct, the use of faulty evidence, junk science and faulty eyewitness testimony, and ineffective assistance of counsel claims. Contact: The Exoneration Project, 312 North May Street, Suite 100, Chicago, Illinois 60607 (312) 789-4955. [www.exonerationproject.org](http://www.exonerationproject.org)

### **Family & Corrections Network**

Primarily provides online resources for families of prisoners related to parenting, children of prisoners, prison visitation, mothers and fathers in prison, etc. Contact: F&CN, 93 Old York Road, Suite 1 #510, Jenkintown, PA 19046 (215) 576-1110. [www.fcnetwork.org](http://www.fcnetwork.org)

### **FAMM**

FAMM (Families Against Mandatory Minimums) publishes the FAMMgram three times a year, which includes information about injustices resulting from mandatory minimum laws with an emphasis on federal laws. Recommended donation of \$10 for a subscription. Contact: FAMM, 1612 K Street NW #700, Washington, DC 20006 (202) 822-6700). [www.famm.org](http://www.famm.org)

### **The Fortune Society**

Provides post-release services and programs for prisoners in the New York City area and occasionally publishes Fortune News, a free publication for prisoners that deals with criminal justice issues, primarily in New York. Contact: The Fortune Society, 29-76 Northern Blvd., Long Island City, NY 11101 (212) 691-7554. [www.fortunesociety.org](http://www.fortunesociety.org)

### **Innocence Project**

Provides advocacy for wrongly convicted prisoners whose cases involve DNA evidence and are at the post-conviction appeal stage. Maintains an online list of state-by-state innocence projects. Contact: Innocence Project, 40 Worth St., Suite 701, New York, NY 10013 (212) 364-5340. [www.innocenceproject.org](http://www.innocenceproject.org)

### **Just Detention International**

Formerly Stop Prisoner Rape, JDI seeks to end sexual violence against prisoners. Provides counseling resources for imprisoned and released rape survivors and activists for almost every state. Contact: JDI, 3325 Wilshire Blvd. #340, Los Angeles, CA 90010 (213) 384-1400. [www.justdetention.org](http://www.justdetention.org)

### **Justice Denied**

Although no longer publishing a print magazine, Justice Denied continues to provide the most comprehensive coverage of wrongful convictions and how and why they occur. Their content is available online, and includes all back issues of the Justice Denied magazine and a database of more than 3,000 wrongly convicted people. Contact: Justice Denied, P.O. Box 68911, Seattle, WA 98168 (206) 335-4254. [www.justicedenied.org](http://www.justicedenied.org)

### **National CURE**

Citizens United for Rehabilitation of Errants (CURE) is a national organization with state and special interest chapters that advocates for rehabilitative opportunities for prisoners and less reliance on incarceration. Publishes the CURE Newsletter. \$2 annual membership for prisoners. Contact: CURE, P.O. Box 2310, National Capitol Station, Washington, DC 20013 (202) 789-2126. [www.curenational.org](http://www.curenational.org)

### **November Coalition**

Publishes the Razor Wire, a bi-annual newsletter that reports on drug war-related issues, releasing prisoners of the drug war and restoring civil rights. A subscription is \$10 for prisoners and \$30 for non-prisoners. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 684-1550. [www.november.org](http://www.november.org)

### **Prison Activist Resource Center**

PARC is a prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, able-ism, heterosexism and classism, specifically within the Prison Industrial Complex. PARC produces a free resource directory for prisoners, and supports activists working to expose and end the abuses of the Prison Industrial Complex and mass incarceration. Contact: PARC, P.O. Box 70447, Oakland, CA 94612 (510) 893-4648. [www.prisonactivist.org](http://www.prisonactivist.org)

# Prison Legal News Book Store

Fill in the boxes next to each book you want to order, indicating the quantity and price. Enter the Total on the Order Form on the next page.  
**FREE SHIPPING on all book / index orders OVER \$50 (effective 4-1-2014 until further notice). \$6.00 S/H applies to all other book orders.**

## SUBSCRIBE TO PLN FOR 4 YEARS AND CHOOSE ONE BONUS!

1. **SIX (6) FREE ISSUES FOR 54 TOTAL! OR**
2. **PRISON PROFITEERS (A \$24.95 VALUE!) OR**
3. **THE HABEAS CITEBOOK (A \$49.95 VALUE!)**

**Prison Profiteers**, edited by Paul Wright and Tara Herivel, 323 pages. **\$24.95.** This is the third book in a series of Prison Legal News anthologies that examines the reality of mass imprisonment in America. *Prison Profiteers* is unique from other books because it exposes and discusses who profits and benefits from mass imprisonment, rather than who is harmed by it and how. 1063

**The Habeas Citebook: Ineffective Assistance of Counsel**, by Brandon Sample, PLN Publishing, 200 pages. **\$49.95.** This is PLN's second published book, written by federal prisoner Brandon Sample, which covers ineffective assistance of counsel issues in federal habeas petitions. Includes hundreds of case citations! 1078

**Prison Nation: The Warehousing of America's Poor**, edited by Tara Herivel and Paul Wright, 332 pages. **\$35.95.** PLN's second anthology exposes the dark side of the 'lock-em-up' political agenda and legal climate in the U.S. 1041

**The Ceiling of America, An Inside Look at the U.S. Prison Industry**, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. **\$22.95.** PLN's first anthology presents a detailed "inside" look at the workings of the American justice system. 1001

**Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada**, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, PLN Publishing, 221 pages. **\$49.95.** Written by Missouri prisoner Jon Marc Taylor, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, paralegal and college courses by mail. 1071

**The Criminal Law Handbook: Know Your Rights, Survive the System**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 608 pages. **\$39.99.** Explains what happens in a criminal case from being arrested to sentencing, and what your rights are at each stage of the process. Uses an easy to understand question-and-answer format. 1038

**Represent Yourself in Court: How to Prepare & Try a Winning Case**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 528 pages. **\$39.99.** Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. The authors explain what to say in court, how to say it, etc. 1037

**Law Dictionary**, Random House Webster's, 525 pages. **\$19.95.** Comprehensive up-to-date law dictionary explains more than 8,500 legal terms. Covers civil, criminal, commercial and international law. 1036

**The Blue Book of Grammar and Punctuation**, by Jane Straus, 110 pages. **\$14.95.** A guide to grammar and punctuation by an educator with experience teaching English to prisoners. 1046

**Legal Research: How to Find and Understand the Law**, by Stephen Elias and Susan Levinkind, 568 pages. **\$49.99.** Comprehensive and easy to understand guide on researching the law. Explains case law, statutes and digests, etc. Includes practice exercises. 1059

**Deposition Handbook**, by Paul Bergman and Albert Moore, Nolo Press, 352 pages. **\$34.99.** How-to handbook for anyone who conducts a deposition or is going to be deposed. 1054

**Criminal Law in a Nutshell**, by Arnold H. Loewy, 5th edition, 387 pages. **\$43.95.** Provides an overview of criminal law, including punishment, specific crimes, defenses & burden of proof. 1086

## SUBSCRIBE TO PLN FOR 3 YEARS AND CHOOSE ONE BONUS!

1. **FOUR (4) FREE ISSUES FOR 40 TOTAL! OR**
2. **PROTECTING YOUR HEALTH AND SAFETY (A \$10.00 VALUE!)**

**Protecting Your Health and Safety**, by Robert E. Toone, Southern Poverty Law Center, 325 pages. **\$10.00.** This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how to enforce your rights, including through litigation. 1060

**Spanish-English/English-Spanish Dictionary**, 2nd ed. Random House. **\$15.95.** Spanish-English and English-Spanish. 60,000+ entries from A to Z; includes Western Hemisphere usage. 1034a

**Writing to Win: The Legal Writer**, by Steven D. Stark, Broadway Books/Random House, 283 pages. **\$19.95.** Explains the writing of effective complaints, responses, briefs, motions and other legal papers. 1035

**Actual Innocence: When Justice Goes Wrong and How to Make it Right**, updated paperback ed., by Barry Scheck, Peter Neufeld and Jim Dwyer, 403 pages. **\$17.00.** Describes how criminal defendants are wrongly convicted. Explains DNA testing and how it works to free the innocent. Devastating critique of police and prosecutorial misconduct. 1030

**Webster's English Dictionary**, Newly revised and updated, Random House. **\$8.95.** 75,000+ entries. Includes tips on writing and word usage, and has updated geographical and biographical entries. Includes recent business and computer terms. 1033

**Everyday Letters for Busy People**, by Debra Hart May, 287 pages. **\$18.99.** Hundreds of sample letters that can be adapted for most any purpose, including letters to government agencies and officials. Has numerous tips for writing effective letters. 1048

**Roget's Thesaurus**, 717 pages. **\$8.95.** Helps you find the right word for what you want to say. 11,000 words listed alphabetically with over 200,000 synonyms and antonyms. Sample sentences and parts of speech shown for every main word. Covers all levels of vocabulary and identifies informal and slang words. 1045

**Beyond Bars, Rejoining Society After Prison**, by Jeffrey Ian Ross, Ph.D. and Stephen C. Richards, Ph.D., Alpha, 240 pages. **\$14.95.** *Beyond Bars* is a practical and comprehensive guide for ex-convicts and their families for managing successful re-entry into the community, and includes information about budgets, job searches, family issues, preparing for release while still incarcerated, and more. 1080

**Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A.**, by Mumia Abu Jamal, City Lights Publishers, 280 pages. **\$16.95.** In *Jailhouse Lawyers*, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned-advocates who have learned to use the court system to represent other prisoners. 1073

**With Liberty for Some: 500 Years of Imprisonment in America**, by Scott Christianson, Northeastern University Press, 372 pages. **\$18.95.** The best overall history of the U.S. prison system from 1492 through the 20th century. A must-read for understanding how little things have changed in U.S. prisons over hundreds of years. 1026

**Complete GED Preparation**, by Steck-Vaughn, 922 pages. **\$24.99.** This useful handbook contains over 2,000 GED-style questions to thoroughly prepare students for taking the GED test. It offers complete coverage of the revised GED test with new testing information, instructions and a practice test. 1099

**\* ALL BOOKS SOLD BY PLN ARE SOFTCOVER / PAPERBACK \***

**Hepatitis and Liver Disease: What You Need to Know**, by Melissa Palmer, MD, 457 pages. **\$17.95.** Describes symptoms & treatments of hepatitis B & C and other liver diseases. Includes medications to avoid, what diet to follow and exercises to perform, plus a bibliography. 1031

**Arrested: What to Do When Your Loved One's in Jail**, by Wes Denham, 240 pages. **\$16.95.** Whether a defendant is charged with misdemeanor disorderly conduct or first-degree murder, this is an indispensable guide for those who want to support family members, partners or friends facing criminal charges. 1084

**Prisoners' Self-Help Litigation Manual**, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 960 pages. **\$39.95.** The premiere, must-have "Bible" of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Highly recommended! 1077

**How to Win Your Personal Injury Claim**, by Atty. Joseph Matthews, 7th edition, NOLO Press, 304 pages. **\$34.99.** While not specifically for prison-related personal injury cases, this book provides comprehensive information on how to handle personal injury and property damage claims arising from accidents. 1075

**Sue the Doctor and Win! Victim's Guide to Secrets of Malpractice Lawsuits**, by Lewis Laska, 336 pages. **\$39.95.** Written for victims of medical malpractice/neglect, to prepare for litigation. Note that this book addresses medical malpractice claims and issues in general, not specifically related to prisoners. 1079

**Advanced Criminal Procedure in a Nutshell**, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **\$43.95.** This text is designed for supplemental reading in an advanced criminal procedure course on the post-investigation processing of a criminal case, including prosecution and adjudication. 1090

**Our Bodies, Ourselves**, by The Boston Women's Health Book Collective, 944 pages. **\$26.00.** This book about women's health and sexuality has been called "America's best-selling book on all aspects of women's health," and is a great resource for women of all ages. 1082

**Arrest-Proof Yourself**, by Dale Carson and Wes Denham, 288 pages. **\$14.95.** This essential "how not to" guide written by an ex-cop explains how to act and what to say when confronted by the police to minimize the chances of being arrested and avoid additional charges. Includes information on basic tricks that police use to get people to incriminate themselves. 1083

**Nolo's Plain-English Law Dictionary**, by Gerald N. Hill and Kathleen T. Hill, 496 pages. **\$29.99.** Find terms you can use to understand and access the law. Contains 3,800 easy-to-read definitions for common (and not so common) legal terms. 3001

**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFave, 7th edition, 603 pages. **\$43.95.** Intended for use by law students, this is a succinct analysis of constitutional standards of major significance in the area of criminal procedure. 1085

**A Dictionary of Criminal Law Terms** (Black's Law Dictionary® Series), by Bryan A. Garner, 768 pages. **\$33.95.** This handbook contains police terms such as preventive detention and protective sweep, and phrases from judicial-created law such as independent-source rule and open-fields doctrine. A good resource to help navigate your way through the maze of legal language in criminal cases. 1088

**PLN Cumulative Index. \$22.50 each.** PLN Article Indexes provide detailed information about all PLN articles, including title, author, issue, page number, topics covered, citations, and if it is state, BOP or jail specific. Can be searched on over 500 subjects such as medical neglect or sexual assault. Circle the index(es) you are ordering: **1990-1995, 1996-1998, 1999-2001, 2002-2004** (more recent indexes not yet available)

#### Subscription Rates

	1 year	2 years	3 years	4 years
<b>Prisoners</b>	<b>\$30</b>	<b>\$ 60</b>	<b>\$ 90</b>	<b>\$120</b>
<b>Individuals</b>	<b>\$35</b>	<b>\$ 70</b>	<b>\$105</b>	<b>\$140</b>
<b>Professionals</b>	<b>\$90</b>	<b>\$180</b>	<b>\$270</b>	<b>\$360</b>

(Attorneys, agencies, libraries)

#### Subscription Bonuses

- 2 years** - 2 bonus issues for 26 total issues  
**3 years** - 4 bonus issues (40 total) or a bonus book as listed on pg. 61  
**4 years** - 6 bonus issues (54 total) or a bonus book as listed on pg. 61

(All subscription rates and bonus offers are valid as of 4-1-2014)



Purchase with Visa, MasterCard, AmEx or Discover by phone: **561-360-2523**

Or buy books and subscriptions online: **www.prisonlegalnews.org**



#### Mail Payment and Order to:

Prison Legal News  
P.O. Box 1151  
Lake Worth, FL 33460

All purchases must be pre-paid. Prisoners can pay with new first-class stamps (strips or books only, no single stamps) or pre-stamped envelopes, if allowed by institutional policies.

Please Change my Address to what is entered below ☐

#### Mail Order To:

Name: \_\_\_\_\_

DOC #: \_\_\_\_\_

Suite/Cell: \_\_\_\_\_

Agency/Inst: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

#### Subscribe to Prison Legal News

**\$ Amount**

6 month subscription (prisoners only) - \$18 \_\_\_\_\_

1 yr subscription (12 issues) \_\_\_\_\_

2 yr subscription (2 bonus issues for 26 total!) \_\_\_\_\_

3 yr sub (write below which FREE book you want) \_\_\_\_\_

or 4 bonus issues for 40 issues total!

4 yr sub (write below which FREE book you want) \_\_\_\_\_

or 6 bonus issues for 54 issues total!

Single back issue or sample copy of PLN - \$5.00 each \_\_\_\_\_

#### Books or Index Orders (No S/H charge on

3 & 4-year sub free books OR book orders OVER \$50!) **Qty.**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Add \$6.00 S/H to BOOK ORDERS under \$50**

(PLN subs do not count towards \$50 for free S/H for book orders)

**FL residents ONLY add 6% to Total Book Cost** \_\_\_\_\_

**TOTAL Amount Enclosed:** \_\_\_\_\_

**\* NO REFUNDS on PLN subscription or book / index orders after orders have been placed. \***

**\* We are not responsible for incorrect addresses or address changes after orders have been placed. \***

~ THE SENZA COLLECTION ~

SENZA SPECIALIZES IN PROVIDING YOU SEVERAL CHOICES  
ALL NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY – OR – NON NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY  
WE HAVE DIVIDED OUR CATALOGS INTO THESE CATEGORIES:

**CAUCASIAN/AFRICAN-AMERICAN/HISPANIC/ASIAN/MIXED HOTTIES**

EACH PAGE OF OUR CATALOGS HAS 99 GLORIOUSLY SEDUCTIVE LADIES POSING JUST FOR YOUR ENJOYMENT.

OVER 250 CATALOGS TO COLLECT AT JUST \$2.50 PER CATALOG

HERE'S A LITTLE FREEBIE FROM SENZA TO YOU!!!

ORDER YOUR FREE SENZA "99 HOTTIES" SAMPLE CATALOG

JUST SEND US TWO U.S. FOREVER OR FIRST CLASS STAMPS AND A SELF ADDRESSED STAMPED ENVELOPE TO:

**SENZA**

FREE CATALOG OFFER

**P.O. BOX 5840**

**BALTIMORE, MD 21282**

**AND FOR THOSE THAT JUST CANNOT WAIT...TAKE ADVANTAGE OF THIS LIMITED TIME OFFER**

**SENZA'S INTRODUCTORY SPECIAL \*\*\*DIRTY DOZEN\*\*\***

\$19.99 GETS YOU ALL THIS + FREE SHIPPING AND HANDLING

12 EYE POPPING CATALOGS! EACH CATALOG HAS 99 PICS TO CHOOSE FROM ON EACH PAGE

PLUS

12 4X6 PRINTS FROM OUR MIXED HOTTIES SELECTION TO SHOW OFF SENZA'S 4X6'S PRINT QUALITY.

**ALL FOR JUST \$19.99**

**REMEMBER YOU MUST: SPECIFY NUDE OR NON-NUDE ON YOUR ORDER**

**SPECIFY YOUR INSTITUTIONS RESTRICTIONS AS TO THE NUMBER OF PRINTS ALLOWED IN ONE ENVELOPE.**

**SENZA CORPORATE POLICIES – PLEASE REVIEW THEM CAREFULLY**

**ALL SENZA COLLECTION IMAGES ARE SOLD AT A FLAT PRICE OF 0.35 CENTS EACH.**

ANYONE WISHING TO PURCHASE 1000 + PRINTS AT ONE TIME WILL BE GIVEN A FLAT PRICE OF 0.30 CENTS PER IMAGE.

**SENZA HAS A MINIMUM ORDER REQUIREMENT OF: \$15.00 THIS DOESN'T INCLUDE S&H CHARGES.**

**SHIPPING AND HANDLING CHARGES ARE AS FOLLOWS:**

**1 – 5 4x6 PRINTS – \$1.00 PER ENVELOPE / 6 – 15 4x6 PRINTS – \$1.50 PER ENVELOPE / 16 – 25 4x6 PRINTS – \$2.00 PER ENVELOPE**

YOU MUST NOTIFY SENZA ON THE ORDER FORM, THE MAXIMUM NUMBER OF PRINTS YOUR INSTITUTION WILL PERMIT IN EACH ENVELOPE

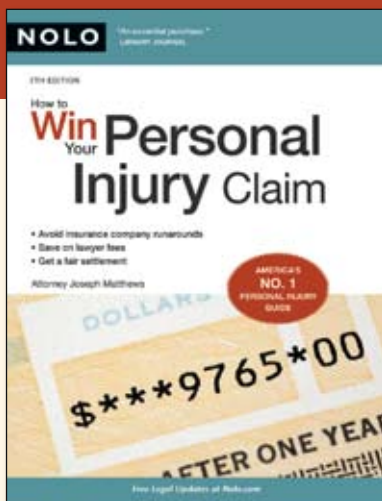
**SENZA WILL ACCEPT U.S. FIRST CLASS POSTAGE STAMPS AT THE RATE OF \$5.00 FOR EACH BRAND NEW FLAT BOOK OF 20 STAMPS.**

YOU ARE REQUIRED TO KNOW YOUR INSTITUTIONS POLICIES REGARDING WHAT IMAGES ARE ACCEPTABLE INTO YOUR FACILITY INSTITUTION. THERE ARE NO EXCEPTIONS TO THIS POLICY. RETURNED/REJECTED MAIL – YOU WILL HAVE 15 BUSINESS DAYS TO SEND US A SASE WITH A STREET ADDRESS IN WHICH TO MAIL YOUR RETURNED/REJECTED PRINTS.

AFTER 15 DAYS THE PRINTS ARE RETURNED TO OUR INVENTORY.

ALL SALES ARE FINAL/NO REFUNDS OR EXCHANGES

## Great Self-Help Book Deals From Prison Legal News!



**Order from Prison Legal News**

Add \$6 shipping for orders under \$50

**Prison Legal News**

**PO Box 1151**

**Lake Worth, FL 33460**

**Phone: 561-360-2523**

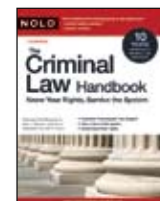
**www.prisonlegalnews.org**

### How to Win Your Personal Injury Claim

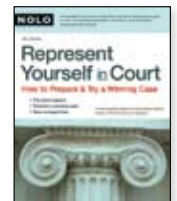
\$34.99

*How to Win Your Personal Injury Claim* shows you how to handle almost every accident situation, and guides you through the insurance claim process, step by step. Learn how to:

- protect your rights after an accident
- determine what your claim is worth
- handle a property-damage claim
- deal with uncooperative doctors, lawyers and insurance companies
- counter the special tactics insurance companies use
- prepare a claim for compensation
- negotiate a full and fair settlement
- stay on top of your case if you hire a lawyer



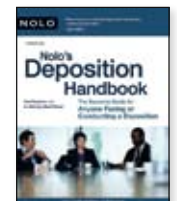
The Criminal Law Handbook  
\$39.99



Represent Yourself in Court  
\$39.99



Legal Research  
\$49.99



Nolo's Deposition Handbook  
\$34.99

**NOLO  
YOUR LEGAL COMPANION**







## Prison Legal News

PO Box 1151  
Lake Worth FL 33460

Change Service Requested

Non-Profit Org.  
U.S. Postage  
PAID  
Portland OR  
Permit No. 3142

### Subscription Renewal

Subscriptions expire after the issue shown on the label is mailed. For example, if the label says: EXPIRES 02/2015, then the subscription expires after the February 2015 issue is mailed. Please renew at least 2 months before the expiration date. IF THE LABEL SAYS **EXPIRES: 06/2014** THIS IS YOUR LAST ISSUE. Please renew immediately to avoid missing any issues.

### Change of Address

If you move or are transferred, please notify PLN as soon as possible so your issues can be mailed to your new address! PLN only accepts responsibility for sending an issue to the address provided at the time an issue is mailed!



# PRISONLEGALNEWS.org

**Dedicated to Protecting Human Rights**

>>FREE Data Search |

Decisions

Investigations

Audits

Publications

Cases

Verdicts

Settlements

**If you need to know about prisons and jails or are litigating a detention facility case, you can't afford not to subscribe to our website!**

**Online subscribers get unlimited, 24-hour a day access to the website and its content!**

 **Sign up for PLN's FREE listserv to receive prison and jail news and court rulings by e-mail.**

- ▶ PLN's website offers all issues of PLN in both searchable database and PDF formats. Issues are indexed and posted as soon as they go to press.
- ▶ Publications section has numerous downloadable government reports, audits and investigations from around the country.
- ▶ Full text decisions of thousands of court cases, published and unpublished.
- ▶ All content is easy to print for downloading and mailing to prisoners.
- ▶ Most complete collection of prison and jail related verdicts and settlements anywhere.
- ▶ Order books, print subscriptions and make donations on line.

- ▶ Brief bank with a wide assortment of winning motions, briefs, complaints and settlements.
- ▶ Links to thousands of prison, jail, criminal justice and legal websites around the world.
- ▶ Thousands of articles and cases, all fully indexed by more than 500 subjects, searchable by case name, case year, state of origin, court, author, location, case outcome, PLN issue and key word search.
- ▶ Search free, pay only if you find it!
- ▶ The highest quality, most comprehensive prison litigation news and research site in the world.

**Affordable rates to meet your budget  
\$19.95 per month • \$149.95 per year**

**Subscribe to Prison Legal News Online! <http://www.prisonlegalnews.org>**



## Systemic Changes Follow Murder of Colorado Prison Director

by John Dannenberg

**J**UST OVER A YEAR AFTER COLORADO Department of Corrections Director Tom Clements was killed by former prisoner Evan Ebel, who had been released directly from long-term solitary confinement, there have been significant and far-reaching changes in Colorado's prison system.

Following a police chase, Ebel, 28, was killed in a shootout with Texas law enforcement officers on March 21, 2013. Autopsy results later obtained by *The Denver Post* confirmed that he died from a gunshot wound to the forehead. Prior to the chase, Ebel had been stopped in his 1991 black Cadillac DeVille for a traffic offense and shot Texas deputy James Boyd multiple times, hitting him in the shoulder and chest and grazing his head.

Ebel spent nearly all of his eight years

in prison in solitary confinement, known in Colorado as administrative segregation (ad-seg). His father, well-known attorney Jack Ebel, who was close to Colorado Governor John Hickenlooper, had previously said his son suffered from behavioral problems as a child, and that solitary damaged him even more.

"What I have seen over six years is, [Evan] has a high level of paranoia and [is] extremely anxious," Jack Ebel said at a state Senate Judiciary Committee hearing in 2011, when he testified about the effects of solitary confinement. "He may have had mental conditions going on. But they are exacerbated to the point that I hardly recognize my son sometimes. We are creating mental illness. We are exacerbating mental illness."

### Murders and Aftermath

COLORADO AUTHORITIES SAID EBEL FIRST lured Domino's pizza deliveryman Nathan Leon to a truck stop in Denver on March 17, 2013, supposedly to deliver a pizza, then shot him to death. Before killing Leon, Ebel forced him to read a statement into a tape recorder criticizing the prison system's use of solitary confinement.

"[Y]ou didn't give two [expletive] about us or our families and you ensured that we were locked behind a door, to disrespect us at every opportunity, so why should we care about you and yours," a transcript of the recording stated. "In short, you treated us inhumanely, and so we simply seek to do the same, we take [comfort] in the knowledge that we leave your wives without husbands, and your children fatherless. You wanted to play the mad scientist, well they [prisoners held in solitary] will be your Frankenstein."

Ebel took Leon's pizza delivery uniform and, two days later, on March 19, wore it to the Clements' secluded home

in Monument, Colorado, about an hour south of Denver. Lisa Clements, director of the Colorado Human Services' Behavioral Health Office, said she and her husband were watching TV when the doorbell rang. Tom Clements answered the door and Ebel shot him at point-blank range. Lisa said he died in her arms.

Ebel then hid out in Colorado Springs for two days before heading to Texas, where he was killed by officers following his shooting of Deputy Boyd, who survived.

In an August 26, 2013 article, *The Denver Post* quoted a source who described details of the investigation into Clements' death, based on sealed court documents. The newspaper said the source, who spoke on the condition of anonymity, had "direct access to and knowledge of the documents and the investigation itself."

The source said investigators traced Ebel to a white supremacist prison gang known as the 211 Crew, and the gang might have orchestrated Clements' killing. Federal and state authorities thought Ebel may have been recruited by gang founder Benjamin Davis to kill Clements to repay a debt, the source said. Both men had served sentences at the same time at the Sterling prison where Ebel, reportedly a member of 211 Crew, was targeted by a rival gang.

"Ebel had been threatened," the source told the *Post*. "Davis stepped in and saved him."

According to the source, Davis then told Ebel that he expected a favor in return once Ebel was released from prison. Clements had ordered 211 Crew members to be separated and transferred to other facilities, which may have made him a target of the gang.

Another theory considered by investigators was that Clements' killing might

## INSIDE

From the Editor	10
Bonnie Kerness & Solitary Confinement	12
PLN Suit vs. Ventura County, CA	16
Oregon Parole Board Answers to Nobody?	18
New Hepatitis C Treatment	20
Prison Phone Issues in Louisiana	26
LA County Probation Officer Arrests	32
Same-Sex Marriage for Prisoners	38
Spoliation of Evidence in NY Suit	42
NC Repeals Racial Justice Act	44
Legally Innocent in North Carolina	48
Do Faith-Based Prisons Work?	50
News in Brief	56

## **DON'T LET THE TIME DO YOU. STAY CONNECTED!**

**Guaranteed savings of up to 90%** on your long distance, out-of-state, and international calls from Federal prisons, county jails and State prisons.

### **Best Rates and Plans**

Multi-number Friends & Family Package for as little as \$10.00/month

More plans & more numbers than any operator -

### **No Hidden Fees**

**What We Say Is What You Pay** – NO additional “fees”, “charges” or “surcharges”

International calls are billed only on call acceptance. No bogus rounding

### **No Contracts, No Penalties, No Hassles**

No long term commitments – Service is always month – to – month. Cancel at anytime with NO penalties and NO cancellation fees with just a phone call or an e-mail.

### **Fast and EZ Setup**

We **ALWAYS** have numbers and can set up instantaneously online or on the phone.

## **Special Commitment, Civil Detention & Halfway House**

\$0.40 connection charge from payphones  
lowest in the business

Voice Mail and Call Recording options

Call, write, e-mail or have your loved ones check out our website for more information.

SP Telecom  
1220 Broadway - # 801-A  
New York, NY 10001  
[www.inmatefone.com](http://www.inmatefone.com)  
e-mail: [clients@inmatefone.com](mailto:clients@inmatefone.com)  
Español: [soporte@inmatefone.com](mailto:soporte@inmatefone.com)  
Call: 1(845)326-5300 (Collect calls are NOT accepted)  
Español: 1(845)342-8110 (Llamadas por cobrar no se aceptan)

Some restrictions apply. Plan availability depends on the Institution

## **NO PERMITA QUE EL TIEMPO LE SEPARE DE SU FAMILIA!**

**Garantizamos ahorros de hasta el 90%** en sus llamadas de larga distancia, entre estados, y en las llamadas internacionales desde prisiones federales, estatales y locales.

### **Los mejores Planes y Tarifas**

Plan para familias y amigos con varios números por tan solo \$10.00/ mes .

Más planes y números que ningún otro operador .

### **No hay letra pequeña**

**Lo Que Ves Es Lo Que Pagas**, NO hay ningún otro cargo extra.

Las llamadas internacionales solo se facturan cuando es aceptada por el familiar al otro lado del hilo telefónico.

**No hay contrato , permanencia ni ningún tipo de trabas .**

El servicio siempre se ofrece en base a un mes de duración pudiendo renovar el mismo todo los meses sin ningún cargo por la terminación del servicio y lo puede solicitar con una simple llamada de teléfono o con un correo electrónico (E-MAIL)

**La solicitud se puede hacer rápida y muy fácil .**

Nosotros siempre tenemos números y podemos procesar el registro inmediatamente en línea o por teléfono.

**Detenidos civiles en cárceles especiales y reclusos en camino a casas de medio camino le ofrecemos los siguientes servicios.**

\$0.40 de recargo desde teléfonos de prepago, la tarifa más baja en el sector .

Buzón de Voz y la posibilidad de grabar las llamadas .



## Prison Legal News

*a publication of the*  
*Human Rights Defense Center*  
[www.humanrightsdefensecenter.org](http://www.humanrightsdefensecenter.org)

### EDITOR

Paul Wright

### MANAGING EDITOR

Alex Friedmann

### COLUMNISTS

Michael Cohen, Kent Russell,

Mumia Abu Jamal

### CONTRIBUTING WRITERS

Matthew Clarke, John Dannenberg,

Derek Gilna, Gary Hunter,

David Reutter, Mark Wilson,

Joe Watson, Christopher Zoukis

### RESEARCH ASSOCIATE

Mari Garcia

### ADVERTISING DIRECTOR

Susan Schwartzkopf

### LAYOUT

Lansing Scott

### HRDC LITIGATION PROJECT

Lance Weber—General Counsel

Robert Jack—Staff Attorney

Sabarish Neelakanta—Staff Attorney

### PLN is a monthly publication.

A one year subscription is \$30 for prisoners, \$35 for individuals, and \$90 for lawyers and institutions. Prisoner donations of less than \$30 will be pro-rated at \$3.00/issue. Do not send less than \$18.00 at a time. All foreign subscriptions are \$100 sent via airmail. PLN accepts Visa and Mastercard orders by phone. New subscribers please allow four to six weeks for the delivery of your first issue. Confirmation of receipt of donations cannot be made without an SASE. PLN is a section 501 (c)(3) non-profit organization. Donations are tax deductible. Send contributions to:

**Prison Legal News**

**PO Box 1151**

**Lake Worth, FL 33460**

**561-360-2523**

**[info@prisonlegalnews.org](mailto:info@prisonlegalnews.org)**

**[www.prisonlegalnews.org](http://www.prisonlegalnews.org)**

PLN reports on legal cases and news stories related to prisoner rights and prison conditions of confinement. PLN welcomes all news clippings, legal summaries and leads on people to contact related to those issues.

Article submissions should be sent to - The Editor - at the above address. We cannot return submissions without an SASE. Check our website or send an SASE for writer guidelines.

Advertising offers are void where prohibited by law and constitutional detention facility rules.

PLN is indexed by the *Alternative Press Index*, *Criminal Justice Periodicals Index* and the *Department of Justice Index*.

## Colorado DOC Murder (cont.)

have been linked to his decision to deny a request by a Saudi Arabian prisoner to return to his native country to serve out the remainder of his prison sentence.

Attorneys for Homaïdan al-Turki, who was sentenced on charges of sexually assaulting his maid, denied that their client was involved in Clements' murder, but investigators said they were looking into whether there are any connections, financial or otherwise, between al-Turki and the 211 Crew.

Investigators suspected that Ebel was headed to Texas after the killings, to the home of a paroled 211 Crew member who lived south of Dallas. After Ebel was killed in the Texas police shootout, authorities found his cell phone and tracked calls he had made while on parole. He also had a hit list with the names of 20 other prison and law enforcement officials; the names on the list have not been disclosed.

Phone records confirmed that Ebel frequently contacted other 211 Crew members who had been released from prison, and that he made or received 23 calls in one 24-hour period, including the hours just before and after Clements was murdered, the source said. According to El Paso County Sheriff's Lt. Jeff Kramer, Ebel made the calls to fellow gang members.

"There's a pretty logical chain of evidence in this case," the source told *The Denver Post*. "It would be highly coincidental if [Ebel] had done all this on his own and there were 23 calls between him and other gang members around [the time of] Clements' murder. There is just too much there, and they are all 211 Crew members. It sounds like everything points to 211."

Then again, it's equally possible that Ebel was simply contacting people he had known in prison, which included gang members, because he had no one else to reach out to after he was released.

In March 2014, Lisa Clements said she was frustrated at how slowly the investigation into her husband's murder was progressing. She said she was concerned that the various agencies involved in the investigation were not doing enough to coordinate their efforts: "Each of them have a piece of the picture, but the whole picture is missing."

She also stated she didn't want people

in Colorado to forget that authorities have not solved the case. "I realize that as impactful as Tom's life and his death was for our family, that it's human nature for the public, for us as individuals, to sort of get on with life."

"Grief takes a while," she continued. "In the days and months that followed Tom's murder, we had our hands full with all that we could do to get through days. As we've begun to address our trauma from that night, and the grief since, we perhaps in our healing process have more space to recognize anger, as well."

El Paso County Sheriff Terry Maketa said his department is determined to get to the bottom of Clements' murder.

"I want her to know that we are not going to give up. It would be really easy to say, 'We know who pulled the gun and shot Dr. Clements,'" Maketa said. "We could easily close out our case and move down the road. But that isn't the responsible thing to do."

He added, "It's just a very slow process. This isn't Hollywood."

The El Paso County Sheriff's Office is the lead agency in the investigation, which also involves the Department of Corrections (DOC), the FBI and other law enforcement officials. According to an unnamed source, in August 2013, El Paso County Judge Jonathan L. Walker, who had issued search warrants as part of the investigation into Clements' death, went into hiding due to allegations that 211 Crew leaders had placed a "hit" on him.

## Who Was Evan Ebel?

EBEL HAD A WELL-DOCUMENTED HISTORY as a violent and troubled individual both before and during his time in prison. According to public records, Ebel went on a crime spree as a teenager, then a second spree which included a carjacking in 2005 that resulted in an eight-year prison sentence. After he was incarcerated his criminal behavior escalated.

On September 17, 2005, Ebel threatened to kill a female prison guard, telling her "that he would kill her if he ever saw her on the streets and that he would make her beg for her life."

Later in 2005 and again in 2006, Ebel threatened to kill staff members in two different prisons. In another incident, he threatened to beat guards if they didn't handcuff him. Overall, Ebel received 28 disciplinary charges, including four for as-



## Colorado DOC Murder (cont.)

sault and three for fighting, as well as two for disobeying direct orders. According to prison reports, he sometimes injured himself and smeared feces on his cell door and the door of another prisoner.

While in solitary, Ebel came to be known by other prisoners as "Evil Ebel." Prison records showed he was tattooed with Nazi symbols and had the word "hopeless" tattooed across his stomach and "hate" inked on his right hand.

He expressed his frustrations with the prison system through letters and poems sent to his mother and to a project called Incarcerated Voices, which provides "free speech radio by and for prisoners."

In a June 2012 poem titled "Life," Ebel wrote: "I've looked in the mirror and don't even recognize / This thing staring back at me / Though I see your death implicit in its

eyes / And really that's all I care to see."

"It's clear that solitary changed him. He didn't recognize himself in the mirror," noted Dr. Scott Washington, director of advocacy for Incarcerated Voices. "Ideally, somebody would have been working with him to address those problems before he was released."

Ebel filed several grievances with prison officials while he was in solitary. "Do you have an obligation to the public to re-acclimate me, the dangerous inmate, to being around other human beings prior to being released and, if not, why?" he asked. Prison staff responded to his last grievance after he was already out, writing, "you claim that you are just looking for answer [sic] to questions about policy. Grievance Procedures is not the appropriate method for debating policy questions nor is it designed to address the policy questions you have posed."

Colorado state prisoner Troy Anderson, who served time with Ebel, said Ebel "was consumed by what they did to him."

"You know, what they do through their solitary policies is akin to rape. They steal such a precious part of our souls, our humanity, our ability to be," he added. "They committed such hateful acts on us. Through contempt and disdain they breed rage. They stole his chance at any real future."

Anderson is no stranger to solitary himself. On August 24, 2012, a Colorado federal district court held that Anderson's long-term confinement in ad-seg violated his constitutional rights. "With the exception of approximately one month in 2001 ... [Anderson] has not been out of doors for

12 years," the court wrote. Prison officials were ordered to provide him with at least one hour of outside recreation three times a week. The state did not appeal. See: *Anderson v. Colorado DOC*, U.S.D.C. (D. Col.), Case No. 1:10-cv-01005-RBJ-KMT.

## Solitary Confinement Connection

EBEL WAS RELEASED FROM PRISON DIRECTLY from solitary confinement when he reached his mandatory parole date on January 28, 2013. A prerelease assessment said he was considered a "very high risk" for recidivism. Two months later, he cut off the ankle monitor he wore as a condition of his parole before killing Nathan Leon and then Tom Clements.

Although the investigation into Clements' death still remains open, including whether Ebel acted alone, it appears that his murder was not related to the 211 Crew or Saudi prisoner Homaidan al-Turki. Rather, the evidence points to Ebel's lengthy stay in solitary confinement and its impact on his mental health as the catalyst for Clements' murder.

According to former prisoner Ryan Pettigrew, who served time with Ebel, "This is what he planned to do as his final get-back at the system."

Ironically, Tom Clements had pushed hard for reforms during his slightly more than two-year tenure as director of the Colorado DOC. Colleagues said he was especially concerned about finding ways to eliminate the DOC's reliance on solitary confinement, particularly when it was used to control dangerous and violent prisoners

### WISDOM IS THE KEY TO SUCCESS Get Wise; Get a SMITH'S GUIDE™

#### SMITH'S GUIDE to Executive Clemency for State and Federal Prisoners

For those who have exhausted all legal remedies or have sentences that are too long to serve, this book lays out every aspect of the clemency process. [288 pages]

#### SMITH'S GUIDE to Chapter 7 Bankruptcy for Prisoners (June 2014)

Get immediate freedom from liens against offender account by filing chapter 7 bankruptcy. Includes required bankruptcy forms and detailed filing instructions.

\$24.95 + \$6.95 shipping/handling (in CA, include additional sales tax of \$2.18) for each book. Please specify book(s) ordered. Sent via USPS media mail. Money orders, personal checks or institutional checks ONLY.

Send name, address and DOC/BOP number, with payment of \$31.90 (in CA, \$34.08) per book, payable to Roberts Company:

Roberts Company, 15412 Electronic Lane #101  
Huntington Beach, CA 92649  
Also available on Amazon.com



Want another chance?

**inPENPALS®**

where meaningful relationships *begin*

Write to:

inpenpals

P.O. Box 18245

San Antonio, TX 78218

www.inpenpals.com

Tambien esta disponible en espanol

**Photo Tryst**  
**PO Box 103**  
**Chapmansboro TN 37035**

**Quality Pics of Quality  
Babes**

All catalogs 450 full color pics

Summer 2013 free with SASE

All other catalogs \$4 or 10 forever stamps, and ship with a coupon for 5 free pics with your minimum order of 10

Winter 2014  
Nudity)

Spring 2014  
All Nude #1 (you see it all)

Topless #1 (contains frontal  
Nudity)

Our next general (season) catalog free with each order

You can deposit funds with us and order your pics "on account"

We accept institutional checks, personal checks from friends and family, and money orders

Stamp orders are only with stamp coupons obtained with regular orders

Oregon and Utah consistently deny our catalogs so we cannot do business there. Sorry

such as Ebel, and to provide prisoners being released from solitary with counseling and therapy to help them successfully transition back into society.

"Evan Ebel was exactly what Tom warned us about every single day," said Roxane White, chief of staff for Governor Hickenlooper.

Indeed, the damaging effects of solitary confinement on prisoners' mental health are both well-documented and well-known; long-term isolation worsens existing psychological problems and can drive the sane insane. [See: *PLN*, Oct. 2012, p.1].

The American Civil Liberties Union of Colorado heaped posthumous praise on Clements for his efforts as a reform-minded prison director.

"Mr. Clements never saw a contradiction between protecting human rights, fiscal responsibility and protecting institutional security," stated ACLU staff attorney Rebecca Wallace. "He thought they all could be met simultaneously. That belief is no more clear than in his work on ad-seg."

Wallace said the ACLU, which has a history of litigation against the Colorado DOC, "didn't file a single lawsuit against

the Department during Mr. Clements' tenure."

Paul Herman, a colleague and longtime friend of Clements, remarked, "Here you had two people [Ebel and Clements], one who suffered significantly from solitary confinement and the other who was trying to do something about it."

"If what happened to Tom isn't the ultimate irony," he said, "I don't know what is."

### Changes Follow Clements' Death

THERE HAVE BEEN SEVERAL MAJOR CHANGES in the Colorado DOC as a result of Clements' death. As one example, *The Denver Post* reported on March 16, 2014 that the state's prison population has been rising due to fewer paroles being granted – an 8% decrease in paroles since before Clements was murdered. Meanwhile, the number of technical parole violations has increased and the Fugitive Apprehension Unit has captured over 400 parolees who had absconded.

Rick Raemisich, who replaced Clements as director of the Colorado DOC, said it was "human nature" that parole

officials would be stricter in the wake of Clements' death. After Ebel removed his ankle monitor and absconded from parole, it took almost a week before officials sought a warrant for his arrest.

"I don't like it, but I understand it," stated Michael Dell with Colorado-CURE, a prisoners' advocacy group. "When parole board members see what happened to Tom Clements, they are not going to take a gamble on someone else."

State Parole Chief Tim Hand was placed on paid administrative leave following Clements' murder and later fired.

Further, the investigation into Clements' death determined that Ebel had been released from prison four years early due to a clerical error. A district court had failed to specify that his four-year sentence for assaulting a prison guard was to be served consecutive to his 8-year sentence for carjacking. As a result the sentences were run concurrently, leading to Ebel's early release in January 2013. His sentence had also been reduced by about four months under a law, SB11-176 – approved of by Clements – that allowed prisoners to earn good behavior credits during time spent in ad-seg.

### The American Friends Service Committee is seeking testimony from men, women, and children in US prisons.

Both the United Nations Periodic Review of the US and the Shadow Report for the UN Convention Against Torture are due within the next few months. Both need input from you on "no touch" (solitary), physical and chemical torture, rape, racism, brutality, sexual and other violence, lack of medical care and other aspects of prisoner treatment that violate human rights. We will be accepting testimonies until September 2014. Although we are unable to respond, you will receive confirmation of receipt of testimony. The writing should be no more than two pages describing what you have experienced or seen. Send to Bonnie Kerness, AFSC, 89 Market St. 6th floor, Newark, NJ 07102. We appreciate your courage in sharing your voice. Thank you.

### NEW FRIENDS, HIGHER EDUCATION, AND EMPLOYMENT & HOUSING UPON RELEASE THROUGH WRITEAPRISONER.COM PROFILES

**Contact WriteAPrisoner.com & Start Looking Forward To Mail Call!**

AS SEEN ON

CNN, 20/20, Fox News,  
Dr. Phil, O Magazine,  
E! True Hollywood,  
and hundreds more!

**WriteAPrisoner.com...**

Simply the largest, highest ranked, & most visited website of its kind!

- Pen-pal Profiles are affordably priced at \$40 for the first year, \$30 for renewing year
- Features a comprehensive search that allows viewers to find your profile by age, race, location, keywords, & more - 32 search options in all
- Your new friends can email their first message to you along with a photo
- Advertises non-stop on every major search engine with thousands of websites linking back to us
- Offers free Reintegration Profiles for inmates seeking employment and housing upon release and education during incarceration
- Translated into 51 languages & geared for international search engines
- Viewers can "subscribe" to your profile to be notified when your profile is updated, blog is added, artwork is posted, poetry is added, your release is near & much more
- Pen-pals have the option of helping you with a broad range of topics using WriteAPrisoner.com's free Self-Help Series



**Get Started Today!**

Friends & family can submit your entire 250 word profile, photo, and payment for you online by visiting

**[www.writeaprisoner.com/post](http://www.writeaprisoner.com/post)**

Or for a FREE Brochure, Send a S.A.S.E. to:

WriteAPrisoner.com  
PO Box 10- PLN  
Edgewater, FL 32132 USA



Proud member of the Better Business Bureau of Central Florida & the Southeast Volusia Chamber of Commerce.  
\*Our website traffic can be independently verified at [www.quantcast.com/writeaprisoner.com](http://www.quantcast.com/writeaprisoner.com)



## Colorado DOC Murder (cont.)

However, Clements had opposed provisions in the original bill that would have placed restrictions on the DOC's ability to hold mentally ill prisoners in solitary.

"[Clements] was concerned about the administrative segregation population, and he asked Sen. Carroll and I to scale the bill back a little because it featured a number of requirements for the DOC to change administrative segregation," said state Rep. Claire Levy. "The original bill, for example, wanted [the DOC] to have more psychiatric resources available. They would have had to make more checks on mental health. We scaled the bill back at Clements' request."

In May 2013, Governor Hickenlooper signed into law legislation that requires the Department of Corrections to seek clarification from the court if a sentencing order does not indicate whether a sentence is to be served concurrently with or consecutive to another sentence. The DOC has two business days to request clarification and the court has two days to respond.

Hickenlooper also ordered an audit to determine whether clerical errors had resulted in other erroneous early releases. By August 2013, judges had reviewed 1,514 cases and corrected the sentences for 267 prisoners. Nine who had already been released were returned to prison to serve out their full terms.

Most notably, there have been changes in the Colorado DOC's use of ad-seg and the number of prisoners released directly from solitary to the community. According to Raemisch, the DOC's ad-seg population has declined from 1,511 in 2011 to 590 as of March 2014. The number of prisoners released from prison directly from solitary has dropped from 70 last year to just one or two a month in early 2014.

"We have people that are well trained on how to handle dangerous people, and yet we felt they are too dangerous to be in general population, so we'll put them in administrative segregation and then, 'oh by the way,' release them into the community. It just doesn't make any sense," Raemisch said.

In fact, Raemisch spent a day locked in an ad-seg cell at the Colorado State Penitentiary to see what it was like – an

experience that led him to curtail the use of solitary confinement, particularly for prisoners with mental health problems. [See article in this issue of *PLN*, p. 8].

There was still room for improvement, however.

A report issued by the Colorado ACLU in July 2013 found that prison officials continued "to rely on long-term solitary confinement to manage mentally ill prisoners, often for months or even years." The report, titled "Out of Sight, Out of Mind," noted that during Tom Clements' tenure the Colorado DOC started the Residential Treatment Program (RTP) to provide treatment to mentally ill prisoners. However, according to ACLU public policy director Denise Maes, "The information that we're getting is that RTP looks very much like ad-seg."

A December 10, 2013 memo issued by the DOC stated that wardens were no longer allowed to place prisoners with a "major mental illnesses" in solitary.

"This is an enormous foundational step toward getting seriously mentally ill prisoners out of solitary confinement and into treatment," stated ACLU staff attorney Rebecca Wallace. "There is still more important work to be done, but we want to take this moment to recognize something we have been asking the Department of Corrections to do for years."

Still, the policy change did not apply to prisoners who have mental health problems

## BRANLETTES BEAUTIES

### OUR SIMPLE POLICIES:

SPECIAL REQUESTS ARE NOT PERMITTED AND ALL MODELS ARE OF LEGAL AGE (BOP-FRIENDLY). DUE TO TREMENDOUS TIME AND COST ANSWERING LETTERS, UNLESS YOU ARE PLACING AN ORDER OR A QUESTION REGARDING YOUR ORDER, WE WILL NOT REPLY TO ANY OTHER QUESTIONS. SASE ARE REQUIRED FOR ANY INQUIRIES OR CONCERNS!

**YOU AND YOU ALONE ARE RESPONSIBLE FOR YOUR SELECTIONS BEING ALLOWED INTO YOUR FACILITY:**

KNOW YOUR INSTITUTIONS POLICIES AS TO WHAT IMAGE CONTENT IS ALLOWED. RETURNED ORDERS ARE NON-REFUNDABLE. THEY WILL BE HELD FOR 14 CALENDAR DAYS IN ORDER FOR YOU TO SEND SELF-ADDRESSED STAMPED: 3 FIRST CLASS STAMPS PER ENVELOPE, WITH A STREET ADDRESS FOR EVERY 20 PICTURES. ALL RETURNED IMAGES HELD AFTER TWO WEEKS WILL BE RESOLD AND WE WILL RETURN TO OUR STOCK.

ALL PAYMENTS ARE BY INSTITUTIONAL CHECKS OR U.S. POSTAL SERVICE OR WESTERN UNION MONEY ORDERS.

THESE PAYMENTS ARE PROCESSED IMMEDIATELY AND SHIPPED IN LESS THAN 3-4 WEEKS. ANY OTHER COMPANY MONEY ORDERS DELAY SHIPMENT 8-10 WEEKS OR UNTIL THAT MONEY CLEARS OUR BANK. YES, WE DEAL WITH PEOPLE THAT ARE, WHILE IN PRISON, STILL TRYING NICKEL AND DIME SCAMS...

**ALL SALES ARE FINAL! EACH CATALOG HAS 84 GORGEOUS LADIES TO CHOOSE FROM HIGH QUALITY PRINTS ON 4X6 GLOSSY PHOTO PAPER**

OUR PRICES ARE SIMPLE:

1-4999 PHOTOS = 0.45 CENTS EACH  
5000+ PHOTOS = 20% DISCOUNT  
1-9 CATALOGS: \$3.00 EACH (+SASE)  
10 CATALOGS: \$25.00+SASE (4 STAMPS)

SHIPPING & HANDLING:

DUE TO VARIOUS PRISON POLICIES REGARDING HOW MANY PICTURES CAN BE SENT IN ONE ENVELOPE, OUR POLICY IS AS FOLLOWS:

01 - 5 PHOTOS---\$1.00 PER ENVELOPE  
06 - 15 PHOTOS---\$1.50 PER ENVELOPE  
16 -25 PHOTOS---\$2.00 PER ENVELOPE

### BRANLETTES BEAUTIES

SELECT YOUR FAVORITE:

WHITE CATALOGS (60 VOLUMES)  
BLACK CATALOGS (60 VOLUMES)  
ASIAN&LATINO CATALOGS (60 VOLUMES)  
PLEASE STATE WHAT STYLE PHOTOS:  
PROVOCATIVE POSES OR NUDE

### FREE CATALOG???

YOU READ IT RIGHT!  
JUST SEND US TWO U.S. FOREVER STAMPS AND A SELF-ADDRESSED SELF-ENVELOPE AND WE WILL SEND TO YOU ONE NUDE OR BOP-FRIENDLY SAMPLE CATALOG (1 PER CUSTOMER) WITH 84 GORGEOUS GIRLS IN FULL COLOR. ACT NOW AS THIS OFFER WILL NOT BE AROUND LONG!!

BRANLETTES BEAUTIES BEAUTIES BAG A RANDOM SELECTION OF 50 OF THE RARE AND EXOTIC \*\*\*YES, FIFTY BEAUTIES ALL POSING JUST FOR YOU!\*\*\* PLUS TWO OF OUR FINEST COLOUR CATALOGS ONLY \$19.95 DID YOU READ THAT RIGHT??? \*\*\*\$19.95??? YES, ONLY \$19.95 FOR 50 OF BRANLETTES BEAUTIES BEAUTIES (PLEASE SPECIFY NUDE OR BOP-FRIENDLY) \*\*\*PLUS \*\*\* TWO OF OUR FINEST COLOUR CATALOGS FREE (YOU PICK A VOLUME) OUR REGULAR SHIPPING AND HANDLING POLICIES APPLY.

BRANLETTES  
P.O. BOX 5765  
BALTIMORE, MD  
21282

## Corcoran Sun

Full Color Prison Yard Monthly  
News ♦ Entertainment ♦ Resources

**3 Month Special Subscription**

**\$5 or 20 FCS Stamps**



### COLOR NEW 18 PAGES

Expanded full color format with exciting episodes of thrilling novels and sexy pics. Many how-to articles on writing, art and health. Filled with entertainment: puzzles, trivia, jokes, poetry... Submit your writing, art, poetry etc. See your submission, name and contact info in print.

**Special 6-Issue Subscription (\$10 or 40 FCS stamps)**

**Special Year Subscription (\$20 or 80 FCS stamps)**

Payments to: Freebird Publishers  
Box 541- Dept. BK, North Dighton, MA 02764  
[www.FreebirdPublishers.com](http://www.FreebirdPublishers.com)  
[Diane@FreebirdPublishers.com](mailto:Diane@FreebirdPublishers.com)



but have not been diagnosed with a “major” mental illness.

“As an initial matter, we remain concerned that the definition of major mental illness adopted by the [Colorado DOC] is too narrow and that there are still prisoners in administrative segregation who are seriously mentally ill and should not be placed in prolonged solitary confinement,” the ACLU stated.

In April 2014, the Colorado General Assembly passed a bill, SB14-064, that would make it more difficult to place mentally ill prisoners in solitary absent exigent circumstances; the bill had passed the senate unanimously.

“Today’s vote moves Colorado one step closer to realizing the former director’s stated desire of bringing greater safety to the public and humanity to the prisons by ending our state’s historic over-reliance on solitary confinement,” the Colorado ACLU said in a statement.

The bill was signed into law by Governor Hickenlooper on June 6, 2014. “[A]s of today, we have no offenders with mental illness in solitary confinement,” said a spokesman for the DOC. Colorado was

the second state – after New York – to enact legislation to remove mentally ill prisoners from solitary.

### Conclusion

AS A POSTSCRIPT TO CLEMENTS’ MURDER, authorities investigated where Ebel had obtained the 9mm handgun he used to kill Clements and Leon. They discovered the gun had been purchased by Stevie Marie Anne Vigil, a childhood friend of Ebel’s, who gave it to him shortly before the killings. Vigil pleaded guilty to providing a firearm to a convicted felon, and on March 3, 2014 she was sentenced to 27 months in federal prison. There was no evidence that she knew Ebel had planned to use the gun to commit the murders.

Ultimately, no one escaped the damaging consequences of Ebel’s actions – not Vigil, nor the families of Tom Clements and Nathan Leon, nor Texas deputy James Boyd or the Colorado prisoners who now have a more difficult time making parole, nor Ebel himself and his family members.

“I’m angry at the horrific senselessness,” said Lisa Clements. “I’m angry that it impacted not just one individual [but

also] our entire family, our community, our friends, our neighbors, our loved ones.”

While “Evil” Evan Ebel has been vilified for murdering Clements, and an investigation continues into the possible involvement of the 211 Crew prison gang, few have condemned the Colorado DOC’s treatment of mentally ill prisoners and use of long-term ad-seg as factors that directly contributed to Clements’ death. As Ebel himself had said, the prison system creates monsters; thus, society should not be surprised when those monsters are released with predictable results.

“In Colorado, by using solitary confinement as the default for mentally ill prisoners, we’re doing the least safe thing for the most amount of money,” observed state Senator Jessie Ulibarri. “The case of Evan Ebel and Tom Clements is the most extreme example of that.”

Sources: *CNN, The Denver Post, Colorado Independent, Associated Press, www.officer.com, www.gazette.com, www.rawstory.com, Huffington Post, www.aclu.org, www.acluco.org, The Atlantic, Los Angeles Times, www.incarceratedvoices.com*

# INMATE TOLL BUSTERS

## Discount Inmate Telephone Calling Services

*Serving: Federal & State Prisons, County Jails and INS Detention Centers Nationwide*

**FREE Same Day Installation, Only \$1.25 Per Month and 6¢ Per Minute**

## PAY ONLY FOR MINUTES YOU USE

**www.InmateTollBusters.com**

**Call 24 Hours: 888-966-8655**

We Send Calls To Cell Phones.  
International Call Services Available.  
Call For Rates. Se Habla Español.



# Two Corrections Chiefs Serve Time in Segregation

by Christopher Zoukis

**R**ICK RAEMISCH, COLORADO'S new corrections director, wanted to better understand the experience of solitary confinement – so he spent a night in segregation at a state prison.

Raemisch had been on the job for seven months when he decided to stay overnight in an ad seg cell at the Colorado State Penitentiary. "I thought he was crazy," said Warden Travis Trani, who added, "I also admired him for wanting to have the experience." Trani received only nine hours notice that his boss was arriving for an extended visit.

On January 23, 2014, just after 7:00 p.m., Raemisch, handcuffed and shackled and wearing a prison uniform, entered cell 22. He was classified as "RFP," or "Removed From Population." After being uncuffed through the food slot he was left alone in the 7-by-13-foot cell.

In an editorial published in *The New York Times* on February 20, Raemisch said the experience was challenging.

"First thing you notice is that it's anything but quiet. You're immersed in a drone of garbled noise: other inmates, blaring TVs, distant conversations, shouted arguments. I couldn't make sense of any of it, and was left feeling twitchy and paranoid," he wrote. "I kept waiting for the lights to turn off, to signal the end of the day. But the lights did not shut off. I began to count the small holes carved in the walls. Tiny grooves made by inmates who'd chipped away at the cell as the cell chipped away at them. For a sound mind, those are daunting circumstances. But every prison in America has become a dumping ground for the mentally ill, and often the 'worst of the worst,' some of society's most unsound minds, are dumped in Ad Seg."

Raemisch then described some of the day-to-day routine that prisoners in solitary endure for years – sometimes decades.

"[T]here were the counts. According to the Ad Seg rules, within every 24-hour period there are five scheduled counts and at least two random ones. They are announced over the intercom and prisoners must stand with their feet visible to the officer as he looks through the door's small window. As executive director, I praise the dedication, but as someone trying to sleep

and rest my mind, forget it. I learned later that a number of inmates make earplugs out of toilet paper.... When 6:15 a.m. and breakfast finally came, I brushed my teeth, washed my face, did two sets of push-ups, and made my bed. I looked out my small window, saw that it was still dark outside, and thought, now what?"

Raemisch said that by 11:30 a.m. the next day, he broke a promise to himself and asked a guard what time it was. "I felt like I had been there for days. I sat with my mind. How long would it take before Ad Seg chipped that away? I don't know, but I'm confident that it would be a battle I would lose," he wrote.

After Raemisch, 61, took over as Colorado's top prison official following the murder of his predecessor, Tom Clements, by a prisoner who was released directly from solitary, he decided to continue Clements' efforts to curtail the use of long-term segregation. Clements had reduced Colorado's solitary population from about 1,500 to 726; Raemisch has since cut that number to under 600.

Raemisch shared his experience at a U.S. Senate subcommittee hearing on the topic of solitary confinement in February 2014, saying segregation was "overused, misused, and abused" in America's prisons. His comments were received by many well-wishers, including officials with the ACLU, who joked that other corrections commissioners might want to take "the Colorado challenge."

Predictably, some criticized Raemisch for being "soft" on criminals or for trying to grandstand through his brief stint in solitary.

Raemisch said he was moved by the experience. "Everything you know about treating human beings, [segregation's] not the way to do it," he stated. "When I finally left my cell at 3 p.m., I felt even more urgency for reform. If we can't eliminate solitary confinement, at least we can strive to greatly reduce its use. Knowing that 97 percent of inmates are ultimately returned to their communities, doing anything less would be both counterproductive and inhumane."

Raemisch spent just 20 hours in segregation – a short time, but long enough

to make a lasting impression. On average, Colorado prisoners sent to solitary stay 23 months.

At least one other corrections chief has served time in segregation to gain empirical experience of what it's like. On May 2, 2014, New Mexico Corrections Department Secretary Gregg Marcantel, 53, entered cell 106 in E pod at the state penitentiary in Santa Fe for a 48-hour visit.

"I can tell you, pacing it, I had five large paces from the edge of my bed to the door. I traveled that route quite a bit," he said. "It's where I ate, where I exercised, where my toilet was. I didn't, for 48 hours, speak a word. I did internal dialog, but I didn't speak a word to another person."

Marcantel said he wanted the experience to be as authentic as possible, even though he knew it was for only a short time. He spent the first day under conditions of administrative seg and the last day in disciplinary segregation.

"There are just things sometimes that you gotta feel, you gotta taste, and you gotta hear and you gotta smell," he noted.

Although he tried to play the part – arriving in restraints, wearing prison clothes, growing a beard to hide his appearance and pretending to be deaf and mute so he wouldn't have to speak – other prisoners in the unit became suspicious and assumed he was a cop.

Marcantel said it got "ugly" and "tense."

His brief time in solitary was recorded on a video camera as he paced, read books, looked out the cell window and ate prison food.

"You start after a while to count everything, because that's how you kind of grab a little bit of control," he observed. "You become a lot more detail-oriented about what your environment looks like."

Marcantel said he made several policy changes based on his experience in segregation; according to one news report, 60 to 80 New Mexico state prisoners have since been moved from solitary confinement to the general prison population. ■

Sources: [www.nytimes.com](http://www.nytimes.com), [www.abqjournal.com](http://www.abqjournal.com), [Wisconsin State Journal](http://Wisconsin State Journal), [www.kob.com](http://www.kob.com)



# WELCOME TO KRASNYA BABES & KRASNYA STUDS WORLD

TENS OF THOUSANDS OF THE HOTTEST AND MOST SCANDALOUS BABES&DUDES FOUND ON THE PLANET.  
EACH CATALOG PAGE HAS 120 BEAUTIFUL GIRLS OR BOYS POSING JUST FOR YOU!  
ORDER ONE CATALOG PAGE FOR ONLY \$4.50 OR FOR 10 U.S. FOREVER STAMPS WITH AN SASE ENCLOSED.  
WE WILL SEND YOU VOLUME ONE. EACH ADDITIONAL VOLUME THE SAME PRICE!

**HELP US TO HELP YOU!**

WE ARE MORE THAN HAPPY TO ANSWER E-MAIL INQUIRES HOWEVER, DUE TO MAILING COST AT \$0.46 CENTS A LETTER, PLEASE ENCLOSE AN SASE WITH YOUR QUESTIONS, OTHERWISE NO REPLIES!

**WHAT ABOUT OUR PRICES AND POLICIES**

COLOR PRINTS ON 4x6 GLOSSY PHOTO PAPER AS LOW AS \$0.35 CENTS PER PRINT ON ORDERS OVER 500 SHIPPED ACCORDING TO POLICY: 25 PICTURES PER ENVELOPE EVERY 24 HOURS. S&H \$2.00 PER ENVELOPE.

**METHOD OF PAYMENT/CONTACT INFORMATION**

U.S. POSTAL SERVICE MONEY ORDERS-STATE & FEDERAL CORRECTIONAL INSTITUTIONAL CHECKS

**PAYABLE ONLY TO: KRASNYA L.L.C.**

EQUATION FOR FIRST CLASS U.S. FOREVER STAMPS

BRAND NEW FLAT BOOK FOR ALL ORDERS AT THE RATE OF \$6.00 PER FLAT BOOK.

WE RESPOND TO OUR CLIENTS NEEDS AND TRY TO HELP THE BEST WE CAN.

**OUR SEASONAL SPECIALS MEAN A KICKOFF OF SAVINGS!**

**COLOR CATALOG DISCOUNT SALE**  
ONE COLOR CATALOG OF 120 BABES  
IN CLASSIC OR NUDE LINES \$4.50  
PLEASE INCLUDE  
A SELF-ADDRESSED STAMPED  
(2-FIRST CLASS STAMPS) ENVELOPE.

**QUANTITY BUY:**  
5-14 CATALOGS =10% OFF OUR REGULAR PRICE  
15 CATALOGS =15% OFF OUR REGULAR PRICE  
20 CATALOGS =20% OFF OUR REGULAR PRICE  
25 CATALOGS =25% OFF OUR REGULAR PRICE  
30 CATALOGS =30% OFF OUR REGULAR PRICE  
35 CATALOGS =35% OFF OUR REGULAR PRICE  
40 CATALOGS =40% OFF OUR REGULAR PRICE  
45 CATALOGS =45% OFF OUR REGULAR PRICE  
50 CATALOGS =50% OFF OUR REGULAR PRICE  
BE SURE TO SPECIFY CLASSIC OR NUDE BABES!

150 VOL. OF KRASNYA BABES CLASSIC LINE  
150 VOLUMES OF KRASNYA BABES NUDE LINE

**\$24.95 S&H FREE**  
**FOR GRAB BAG OF**  
**50 PHOTOS**  
**FROM ALL OUR CATALOGS**  
**SPECIFY RACE AND MAIN**  
**AREA OF YOUR INTERESTS**  
**WE WILL PICK SELECTION**  
**FOR YOU**  
**BONUS 1 COLOR CATALOG**  
**PAGE OF 120 BABES**

**LOOSE STAMPS FOR LOOSE BABES**

KRASNYA LOOSE STAMP GRAB BAG SPECIAL  
10 LOOSE BABES.....30 STAMPS  
25 LOOSE BABES.....75 STAMPS  
50 LOOSE BABES.....150 STAMPS  
ALL STAMPS MUST BE 1ST CLASS STAMPS

IN LIKE NEW CONDITION!  
SPECIFY NUDE OR BOP-SAFE (NO VISIBLE NUDITY)  
WE WILL PICK SELECTION FOR YOU

**KRASNYA BABES HAS SPRUNG SALE!**  
**FREE SAMPLE CATALOG FROM KRASNYA!**  
**120 BABES IN EACH CATALOG**  
**ENCLOSE ONE SASE WITH TWO FIRST**  
**CLASS STAMPS! 1 CAT PER CUSTOMER**  
**PLEASE SPECIFY MALE OR FEMALE BABES**  
**NUDE OR BOP-FRIENDLY**

3 BRAND NEW FLAT BOOKS OF FOREVER  
STAMPS FOR GRAB BAG OF 45 PHOTOS  
FROM ALL OUR CATALOGS. SPECIFY RACE  
AND MAIN AREA OF YOUR INTERESTS  
WE WILL PICK SELECTION FOR YOU  
BONUS 1 COLOR CATALOG OF 120 BABES  
PLEASE INCLUDE 6 FOREVER STAMPS  
WITH YOUR ORDER FOR S&H

KRASNYA L.L.C.  
P.O. BOX 32082  
BALTIMORE, MD 21282  
EMAIL AND CORRLINKS REQUESTS ACCEPTED AT:  
KRASNYABABES@HOTMAIL.COM

WE'D LIKE TO START THE HOLIDAYS RIGHT THIS YEAR!  
THE WAY TO DO THAT IS BY SENDING YOU INCREDIBLE VALUES  
IT'S ONE THING TO TALK THE TALK, ANOTHER TO WALK THE TALK

50 GREAT BABES 0.50 CENTS EACH!—\$25.00  
100 GREAT BABES 0.45 CENTS EACH!—\$45.00  
200 GREAT BABES 0.40 CENTS EACH!—\$80.00  
300 GREAT BABES 0.40 CENTS EACH!—\$120.00  
500 GREAT BABES 0.35 CENTS EACH!—\$175.00

STANDARD TERMS & CONDITIONS APPLY – \$2.00  
PER ENVELOPE (25 PHOTO) FOR SHIPPING AND HANDLING!

WAIT!  
YOU SAY YOU DON'T HAVE ENOUGH BABE CHOICES  
OR CATALOGS? YOU NEED CATALOGS?  
PREPAY YOUR ORDER AND WE WILL SEND YOU  
FREE COLOR CATALOGS!  
GREAT DEAL, BUT HOW MANY CATALOGS?

FOR EVERY 100 BABES WE'LL SEND YOU  
240 BABES TO CHOOSE FROM!

**ORDER**

50 BABES.....ONE SINGLE CATALOG  
100 BABES.....ONE DOUBLE CATALOG  
200 BABES.....TWO DOUBLE CATALOGS  
300 BABES.....THREE DOUBLE CATALOGS  
500 BABES.....FIVE DOUBLE CATALOGS

KRASNYA IS PROUD TO INTRODUCE AT FANTASTIC INTRODUCTORY PRICES  
THE CONNOISSEUR'S COUTURE "CACHE TWO-FIVE COLLECTION"  
OF INTERNATIONAL ADULT FILM STARS  
TWELVE PACKAGES OF 25 NUDE AND NON-NUDE POSES,  
AVAILABLE ONLY IN OUR "CACHE TWO-FIVE" COLLECTION.

"CACHE TWO-FIVE"

"CACHE TWO-FIVE" IS AVAILABLE IN TWELVE (12) SPECIALLY PRICED PACKAGES  
OF 25 POSES IN NUDE AND NON-NUDE POSES.

PLEASE SPECIFY ON YOUR ORDERS IF YOU WANT NUDE OR NON-NUDE PACKAGES  
AND WHAT COLLECTION NUMBER YOU'D LIKE.

COLLECTIONS ARE NUMBERED 01-12 FOR EXAMPLE ON YOUR ORDER YOU'D WRITE:

\*\*\*NUDE CACHE TWO-FIVE PACKAGE 01 & 02\*\*\*

REMEMBER THERE ARE TWELVE (12) COMPLETELY DIFFERENT PACKAGES OF 25 BABES,  
THERE ARE NO DUPLICATES IN ANY OF THE 12 PACKAGES.

600 BEGUILING BEAUTIES, ALL BRAND NEW ADDITIONS TO OUR LINE AND AVAILABLE ONLY  
IN OUR CACHE "TWO-FIVE" PACKAGES! 300 NUDES AND 300 NON-NUDE BEAUTIES  
CAPTURE YOUR OWN COLLECTION OF KRASNYA'S "CACHE TWO-FIVE" SELECTIONS IN  
INDIVIDUALIZED PACKAGING OF 25 RARE AND EXQUISITE BREATH-TAKING BEAUTIES.

THE CONNOISSEUR'S COUTURE COLLECTION OF "CACHE TWO-FIVE" BRINGS YOU  
25 BEAUTIES IN EACH "CACHE TWO-FIVE" PACKAGE FOR ONLY \$12.95 PER PACKAGE

LIMITED TIME SPECIAL \*\*\*\*\* \$59.95\*\*\*\*\*

PLUS S&H FOR 6 "CACHE TWO-FIVE" PACKAGES OF THE NUDE OR NON-NUDE COLLECTIONS  
150 BEAUTIES

IMAGINE 150 OF THESE EXCITING AND EXQUISITE BEAUTIES  
FOR A RIDICULOUSLY LOW PRICE OF

\*\*\*\*\*\$59.95\*\*\*\*\* PLUS \$12.00 SHIPPING AND HANDLING CHARGE.

ADD \$2.00 FOR SHIPPING AND HANDLING PER "CACHE TWO-FIVE" PACKAGE ORDERED.

YOU MUST SPECIFY NUDE OR NON-NUDE PACKAGES

IF NOT SPECIFIED NON-NUDE WILL BE SHIPPED AUTOMATICALLY

ALL OF OUR NORMAL POLICIES APPLY

**FOR KRASNYA CLIENTS WHO WORK THE YARDS;**  
**HAVE WE GOT A GREAT OPPORTUNITY FOR YOU...GRAB BAG**  
**MR. HUSTLE GRAB BAG BARGAIN DAYS**

ONLY \$0.25 CENTS PER BABE

5 GRAB BAG MINIMUM PURCHASE REQUIRED

\$2.00 SHIPPING AND HANDLING PER BAG

25 AWESOME BABES PER BAG AT ONLY \$6.25 PER BAG

YOU MUST BUY AT LEAST 5 GRAB BAGS OR 50 GRAB BAGS.

THIS\*\*\*GRAB BAG BARGAIN\*\*\* IS NOT GOING TO BE OFFERED  
AGAIN THIS YEAR. **SO STOCK UP NOW!**

AS YOU KNOW YOU GET AN ARRAY OF 25 GORGEOUS BABES  
YOU CAN ONLY CHOOSE EITHER MALES OR FEMALES,  
ALL NUDES OR BOP SAFE...THE INDIVIDUAL SELECTIONS COME  
FROM OUR BEST CATALOGS!!!

YOU MAY WANT TO SIT DOWN FOR THIS BONUS BARGAIN!

OUR BABES CATALOGS SPECIAL OF THE DECADE

— 5 COLOR CATALOGS FOR \$6.00 —  
— 10 COLOR CATALOGS FOR \$12.00 —  
— 15 COLOR CATALOGS FOR \$18.00 —  
— 20 COLOR CATALOGS FOR \$24.00 —

OUR CATALOGS SPECIAL AVAILABLE WHEN YOU PURCHASE  
THE 5 GRAB BAG MINIMUM!

THIS PRICE INCLUDES FREE SHIPPING ON THE CATALOGS  
BECAUSE OF SHIPPING TERMS ALL CATALOGS SOLD IN  
MULTIPLES OF 5 FOR \$6.00 ONLY.

YOU CHOOSE EITHER MALE OR FEMALE CATALOGS  
AND IF YOU WANT NUDE OR BOP SAFE!!

## From the Editor

by Paul Wright

SINCE WE BEGAN PUBLISHING *PLN* IN 1990 we have documented the horrific effects of solitary confinement and its overall goal and purpose of psychologically destroying prisoners subjected to long-term isolation. It's not a coincidence that the rise of solitary confinement in the U.S. began in the 1970s just as American courts were ending the use of corporal punishment as a form of discipline by prison officials. For example, as recently as the early 1970s prisoners were still being flogged with leather straps in Tennessee and Arkansas.

The rise of solitary confinement also coincided with the successful use of long-term isolation and sensory deprivation by the U.S. as a torture and interrogation technique against freedom fighters and anti-imperialists in Vietnam, South America and elsewhere. What began as a counter-insurgency tactic overseas is now routinely used against an estimated 80,000 U.S. prisoners on a daily basis – the vast majority of whom harbor no animus toward the government that imprisons them but are simply a little too poor, a little too mentally ill, not law abiding enough or not subservient enough to stay out of prison or, once incarcerated, to avoid being placed in solitary. As states and the federal government spent billions to build supermax prisons, it was no surprise they would be filled with whoever was available to fill them.

Colorado was among the states that invested in solitary confinement as a means of controlling – and torturing – prisoners. After decades of using long-term segregation, it appeared there was some modest hope for change when Tom Clements was

appointed director of the Colorado DOC and began to curtail the use of solitary.

I met Clements at a conference on supermax prisons several years ago at Columbia Law School, where we were both speakers. He discussed his efforts to reduce the use of isolation in Colorado, which had already been moderately successful. He seemed genuinely committed to the notion of reform; therefore, it was all the more shocking and ironic that he would be killed by a prisoner recently released from solitary confinement. This month's cover story delves behind the headlines of Clements' death into the background of his killer, Evan Ebel, and the repercussions that followed.

This issue of *PLN* also includes a poem by renowned poet Maya Angelou, who passed away on May 28, 2014. In addition to being a poet she was at various times homeless, a lounge singer, a pimp, a prostitute, a victim of child rape – all of which influenced her work – and had demonstrated by the time of her death that she was much more, by serving as a powerful voice for the voiceless. Several of her poems are especially meaningful for people behind bars, such as "Prisoner" and "Caged Bird." The world will be a more somber place without her poetry but is more illuminated because of it.

Each year we spend a great deal of money sending sample copies of *PLN* to potential subscribers in the hope they will subscribe. From now until the end of the year we are running our Subscription Madness campaign, whereby people can purchase multiple one-year subscriptions to *PLN* for individuals who have not subscribed before, at reduced rates.

Our hope is that after receiving *PLN* for a year, people will want to renew at our regular rates. The Subscription Madness rates do not apply to current or former subscribers – only those who have never subscribed previously. The goal is to introduce new people to *PLN*. This is a great time to purchase subscriptions for your favorite judges, legislators, corrections officials, prisoners, family members or anyone else who you think needs to learn more about the realities of mass incarceration and its impact on our nation. See the ad on p. 51.

Our fight against prison and jail censorship continues. As this issue goes to press we are awaiting a decision in our challenge to system-wide censorship of *PLN* by the Florida DOC that has been ongoing since 2009. We are currently litigating the censorship of *PLN* books by the Nevada DOC and are challenging postcard-only policies and book and magazine bans by jails in Florida, Georgia, California, Washington, Tennessee, Michigan, Arizona and Virginia. Within the past month we have successfully concluded lawsuits against jails in Wisconsin and Texas. If you are a *PLN* subscriber or purchase books from *PLN*, please let us know if you experience censorship of any *PLN* reading materials. We are dedicated to ensuring that prisoners anywhere in the U.S. can receive *PLN* and the books we distribute. All too often, prison and jail officials fail to notify us of censorship decisions; thus, we rely on our readers to keep us informed so we can take appropriate action.

Enjoy this issue of *PLN*, and please encourage others to subscribe and to participate in Subscription Madness! 📖

## Earn an Adams State University Degree via Correspondence Courses



Now Available: Bachelors Degree  
in English/Liberal Arts

- Correspondence Courses via mail • No internet access required
- Degree options available — Associate of Arts or Science, Bachelors degrees in English, Business Administration, Government, History, Interdisciplinary Studies, Sociology, Paralegal Certificate Program, Masters Degree in Business Administration
- Affordable tuition — \$165/semester hour for undergraduate correspondence courses, \$350/semester hour for Masters level correspondence courses  
Payment options include cashiers check, credit card, money order or verified personal check
- Accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools
- 16+ years of experience serving incarcerated students
- Veteran friendly
- FREE unofficial evaluation of previously earned credits



Call or write to receive additional  
information — 800-548-6679  
Adams State University  
Office of Extended Studies, Suite 3000  
208 Edgemont Blvd. Alamosa, CO 81101  
[www.adams.edu](http://www.adams.edu)

# In Remembrance of Maya Angelou

(April 4, 1928 – May 28, 2014)

## Caged Bird

by Maya Angelou

A free bird leaps  
on the back of the wind  
and floats downstream  
till the current ends  
and dips his wing  
in the orange sun rays  
and dares to claim the sky.

But a bird that stalks  
down his narrow cage  
can seldom see through  
his bars of rage  
his wings are clipped and  
his feet are tied  
so he opens his throat to sing.

The caged bird sings  
with a fearful trill  
of things unknown  
but longed for still  
and his tune is heard  
on the distant hill  
for the caged bird  
sings of freedom.

The free bird thinks of another breeze  
and the trade winds soft through the sighing trees  
and the fat worms waiting on a dawn bright lawn  
and he names the sky his own.

But a caged bird stands on the grave of dreams  
his shadow shouts on a nightmare scream  
his wings are clipped and his feet are tied  
so he opens his throat to sing.

The caged bird sings  
with a fearful trill  
of things unknown  
but longed for still  
and his tune is heard  
on the distant hill  
for the caged bird  
sings of freedom.

*"Caged Bird" from SHAKER, WHY DON'T YOU SING? by Maya Angelou, copyright © 1983 by Maya Angelou. Used by permission of Random House, an imprint and division of Random House LLC. All rights reserved. Any third party use of this material, outside of this publication, is prohibited. Interested parties must apply directly to Random House LLC for permission.*

# Bonnie Kerness: Pioneer in the Struggle Against Solitary Confinement

by Lance Tapley

**I**N 1986, OJORE LUTALO, A BLACK revolutionary in Trenton State Prison – now the New Jersey State Prison – wrote to Bonnie Kerness’ American Friends Service Committee (AFSC) office in Newark. His letter described the extreme isolation and other brutalities in the prison’s Management Control Unit (MCU), which he called a “prison within a prison.”

“I could not believe what he was telling me” about the MCU, Kerness says. She reacted by becoming “this lunatic white lady” calling New Jersey corrections officials about Lutalo.

She immediately went to work trying to stop MCU guards from harassing prisoners by waking them at 1 a.m. to make them strip in front of snarling dogs leaping for their genitals – to arbitrarily have them switch cells. She got this practice stopped.

Lutalo’s letter also began to open her eyes to the torture of solitary confinement, which in the mid-1980s was just starting to spread across the country as a mass penological practice. Coordinator of the AFSC’s national Prison Watch Project, Kerness had worked on prison issues since the mid-1970s. Now she became an anti-solitary confinement activist. She has been one longer and more consistently than, possibly, anyone else.

“I try not to use the word ‘pioneer’

lightly,” says David Fathi, director of the American Civil Liberties Union’s National Prison Project, “but it certainly applies to Bonnie. She did the groundwork for the progress and success we are now having.”

Corey Weinstein, a California physician who also was a pioneering activist against solitary confinement, says Kerness made a huge contribution early on by bringing a human rights vision to the effort. It provided “the intellectual framework that we could grasp onto” to understand what was happening.

Reflecting on how difficult it has been for solitary confinement to be publicly recognized as torture, Stuart Grassian, a Massachusetts psychiatrist – another trailblazer who is credited with identifying long-term isolation as the cause of a devastating psychiatric syndrome – observes: “How frightening it is to see people choose not to see what’s in front of them.”

Many years ago Bonnie Kerness chose to see what was in front of her.

## A Child Shocked by Injustice

KERNESS IS VERY SLIM, LOOKS MUCH younger than 69, and dresses stylishly – though her wardrobe is purchased at thrift shops, she says. She makes sweeping gestures when she speaks in her East Coast urban twang.

Born in Manhattan, she grew up in the Bronx and Queens. Her working-class family was not political, but at 12 years old she was shocked to see on the television news “kids my own age” being beaten for trying to integrate schools in the South. This glimpse of injustice would lead to her life’s work.

When she was 14, in 1956, she began doing volunteer social work in the Lower East Side, where for the first time she met community organizers. Five years later she became one herself, traveling the South for the civil rights movement, working with the NAACP and other groups.

She portrays herself then as “a young white kid who went south with very little political understanding.” But in addition to on-the-job training, she received what might be called an elite community-organizing graduate-school education: a year in the mid-1960s at Tennessee’s Highlander Research and Education Center, formerly the Highlander Folk School, a legendary social justice leadership school which Rosa Parks and Martin Luther King had attended.

“I have a special feeling for my generation,” Kerness says – the activist sixties’ generation. “We each had something outside of ourselves” to be devoted to.

In the early 1970s she went up from



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription! Quarterly drawing WINS \$100! (Void in New York) (Last Quarter's winner from Somers, CT.)

**TELL YOUR FRIENDS! ACT NOW!!**

**PO Box 2063 • Fort Walton Beach FL. 32549**  
**[www.InmateMagazineService.com](http://www.InmateMagazineService.com)**



# Inmate Magazine Service



the South to New Jersey and got work with the AFSC in a housing campaign. She and others noticed that many poor people had a father or other family member in prison. This perception led to the founding of a New Jersey prisoner-rights effort that ultimately morphed into the Prison Watch Project.

In her teenage years in Queens, she had completed two years of college. She began taking courses again, eventually getting a master's in social work from Rutgers. She also became active in the women's, gay rights and anti-Vietnam War movements.

And she married and divorced. She has three biological children, an adopted child and "one of my lovers had three African-American children" she helped raise. Now she attends to seven young people she all calls her grandchildren – one of whom interrupts an interview in the tidy AFSC office in gritty downtown Newark with a call to grandma to ask if she will pay for a pizza with her credit card.

Kerness' life outside her work – half-time, theoretically, now that she's officially retired – revolves around her grandchildren.

## The Discovery of Solitary Confinement

AFTER LUTALO'S LETTER REVEALED THE horrors of the Trenton MCU, to better understand the control-unit phenomenon Kerness got in touch with the Committee to End the Marion Lockdown. In 1983 the United States Penitentiary in Marion, Illinois became the first prison in modern times to adopt near-total confinement of all prisoners to their cells – thus, the first supermax.

Kerness credits Nancy Kurshan, a prominent sixties' and seventies' radical and founder of the Marion anti-lockdown group, with helping guide her initial work, as did several former Marion prisoners. Kerness soon founded the AFSC's Control Unit Monitoring Project, focusing first on the 80 to 90 African-American politicized prisoners in the Trenton unit.

As she began getting letters from prisoners in other states who told stories similar to Lutalo's, she contacted organizations around the country that were beginning to be alarmed by the rise of these draconian units. This new kind of imprisonment

seemed so bizarre, "People weren't sure what they were looking at," Kerness says.

And while she worked to build opposition to solitary confinement, she saw it rapidly become common. Only a handful of sizeable control units existed in the mid-1980s, but fewer than 15 years later more than 40 states had them. Many were large, free-standing supermax prisons.

Kerness also watched in dismay as control units and supermaxes became dumpsters into which society threw the mentally ill. The arbitrariness of the supermax regimen became clear. "You're there because we want you there," she says of the ultimate criterion for who is put into isolation.

As citizen campaigns specifically against control units began popping up spontaneously, Kerness made connections with them and helped them – in California, Wisconsin, Illinois, Massachusetts. In 1994, she helped bring 40 activists from around the country to the AFSC offices in Philadelphia to found the National Campaign to Stop Control Unit Prisons, which held public meetings on solitary confinement in several states.

**William L Schmidt**  
ATTORNEY at LAW, P.C.

[911CIVILRIGHTS@GMAIL.COM](mailto:911CIVILRIGHTS@GMAIL.COM)

**559.261.2222 (clients only collect)**

### Legal Services for California Inmates:

**APPEALS**

**WRITS OF HABEAS CORPUS**

**Civil Litigation**

**Catastrophic Injury Litigation**

**Money Management**

**Business Windup**

**Contracts**

CIVIL RIGHTS-SECTION 1983-FEDERAL AND STATE  
APPEALS AND WRITS- ONLY COMPLEX AND UNIQUE CASES  
PRISON-TRANSFER-DISCIPLINE-VISITING-CLASSIFICATION-HOUSING  
PROP. 36 RE-SENTENCING-3 STRIKES-MEDICAL-PAROLE HEARINGS

-----OUR CLIENTS GO HOME, HOW ABOUT YOU? -----  
*Please submit a single page summary of your case. Due to the volume, we cannot return documents or respond to all inquires. We are not a low cost or pro bono law firm, but if you want results, write us.*

**P.O. BOX  
25001  
FRESNO, CA  
93729**

### **Solitary: First Among Other Issues**

KERNESS HAS BEEN INVOLVED WITH many other prison issues, including sexual abuse, restraint chairs and beds, the overuse of stun guns and pepper spray, and prison privatization.

Her work has been particularly devoted to solitary confinement, she says, because “we’re so well known on this issue.” Her daily duties include answering mail and telephone calls, sending out reams of requested material, contacting the news media, mentoring student interns, giving talks to college and community groups, and writing articles and reports.

Her AFSC reports include, as editor or author: “The Prison Inside the Prison: Control Units, Supermax Prisons, and Devices of Torture” (with Rachael Kamel, 2003); “Survivors Manual: Surviving in Solitary” (4<sup>th</sup> Printing, 2008); and “Torture in United States Prisons: Evidence of Human Rights Violations” (Second Edition, 2011).

Although she praises several Quaker activists who encouraged her, she expresses frustration with the AFSC for starting national anti-solitary confinement campaigns only to shut them down.

After four years the AFSC unaccountably “pulled the plug,” she says, on the National Campaign to Stop Control Unit Prisons. Similarly, after a well-attended “StopMAX” conference in Philadelphia in 2008, the sub-

stantial national effort that was supposed to grow out of it never materialized.

An official at the AFSC’s national headquarters in Philadelphia, Clinton Pettus, says the organization, “like most nonprofits, went through a period of financial constraint a few years ago,” and was forced “to do more with less” in its solitary confinement work. The result: “We partner with like-minded groups and individuals to form state-based coalitions that build grassroots campaigns.”

Kerness also generally faults the national organizations involved with prison reform for not making better connections between the American domestic prison system and the American foreign war machine. The organizations don’t recognize, she says, that there’s a worldwide class and racist oppression coming from the top of the economic pyramid.

“The people who run the country own the means of production,” she says, and this rich elite is ultimately responsible for the “war against the people here” – which she sees as a campaign of social control – and American wars against the people of other countries. Both here and abroad, the primary targets are black and brown people. [Ed. note: Plus poor people in general].

### **A Partner in Activism**

KERNESS BEGAN HELPING OJORE LUTALO in 1986, but he has been, during the many years he spent on the inside, and since 2009, when he was released from prison, a professional partner in conveying to the world the

horrors of solitary confinement.

He has vast knowledge of the subject. He spent 22 of his 28 years behind bars in isolation in the Trenton MCU. Now 66 – strong-looking, with a shaved head – he volunteers twice a week in the AFSC Newark office at a desk across a small room from Kerness. And he speaks beside her when she goes to colleges and community groups.

Lutalo got in touch with Kerness to protest what he says were the prison’s “corrupt” practices, including inadequate food and medical care and arbitrary denials of visitors. But the corruption also was more fundamental. Lutalo spent so many years in solitary, he says in an interview, not because he broke prison rules but for “entertaining political thoughts the administration didn’t approve of.”

He presents proof, showing a 2008 letter from prison officials stating he was being kept in the MCU because his “radical views and ability to influence others poses a threat to the orderly operation of this Institution.” Serving time for armed robbery and assault with intent to kill, he had been a member of the Black Liberation Army, an underground, revolutionary offshoot of the Black Panthers.

Kerness has written of Lutalo: “During the quarter century that we monitored Ojore Lutalo in isolation, he was never assaulted either physically or chemically. The ‘no-touch’ torture he endured consisted of sleep deprivation, screeching sounds, extreme silence, extreme cold and heat, intentional situational placement, humiliation – a systematic attack



# **FreedomLine®**

**We make it simple.**

**You reach your loved ones by calling a local number.**  
**That's a lot cheaper than calling long distance. *It's that simple!***

- We charge \$2.50 per month for the number.
- For Calls to anywhere in the U.S., we charge you 5¢ per minute
- To Mexico - 15¢; to Canada - 11¢, to just about anywhere else in the world - 31¢
- No Contract, No Credit Check, No Setup Fee, No Cancellation Fee, No Early Termination Fee
- Cancel anytime; any money left on the account is refunded

**Tell Your Folks to Sign Up at [www.freedomline.net](http://www.freedomline.net)**

**Any time you refer a new customer and they sign up, you both get 300 free minutes!**  
Some restrictions apply. Details upon request.

 **Or Mail: FreedomLine**  
PO Box 7 - SCA  
Connersville, IN 47331

**Also see our long-running Classified Ad in this and every issue**

**Serving You with Excellence Since 2009**

FCC Reg. No. 0021217047

on all human stimuli.”

“The goal was to break me psychologically,” Lutalo says.

He didn’t break. But maintaining sanity during decades of solitary confinement is exceedingly difficult, he says. He saw many prisoners “wiped out” by the isolation. He says his political commitment kept him sane. His creation of political art – collages that combine drawings and newspaper clippings – was especially helpful.

With Kerness’ assistance, Lutalo’s plight and the conditions at the MCU became known. Reporters interviewed him; documentary films appeared; a class-action lawsuit was filed on behalf of the unit’s African-American prisoners. In 1995 the lawsuit was settled, and the court appointed a special master to review each prisoner’s case.

Eventually, after years, most prisoners were released into the prison’s general population. Lutalo spent several years in general population, but was put back into the MCU because, Kerness says an official told her, of a request by the federal Department of Homeland Security. He was released from isolation only when his prison term ended.

### A Harsh State

ALTHOUGH KERNESS’ WORK HAS OFTEN been on the national stage, the Trenton MCU has continued to be a major concern. The state’s prison system has “always been one of the toughest” on prisoners, she says, and the MCU is still being used “uncon-

scionably” for mentally ill prisoners. But, she adds, it’s difficult to know what’s going on in it and anywhere else in “an extremely closed” New Jersey system.

As if to prove that point, when the New Jersey Department of Corrections is asked about the number of prisoners held in solitary confinement, a spokesman replies by email: “New Jersey does not utilize solitary confinement in any of its prisons.”

This is a common response from corrections departments, since “solitary confinement” is not a bureaucratic phrase. Further inquiry produces an admission that “administrative segregation (ad seg) ... is utilized as a punishment for inmates and entails the loss or reduction of certain privileges.” The spokesman, Matthew Schuman, adds that “the vast majority of inmates in ad seg are double-bunked. Even those in single cells have opportunities to interact with other inmates, so ad seg is distinctly different from solitary confinement.”

Kerness, however, counts over 329 ad seg beds at the Trenton prison that “we’re pretty sure are isolation cells.” In addition, she’s “positive” there are 96 solitary confinement cells in the MCU. Ad seg beds in four other prisons total 994, she says. These may or may not be doubled-bunked, but they’re “locked down.” Then there are special needs and protective custody housing units about which, she says, little is known.

Jean Ross, a volunteer prisoners’ rights attorney based in Princeton, agrees with Kerness that New Jersey’s prison system is unhelpful in providing information, isolates

many prisoners and is a harsh system.

Ross has specifically challenged, in a class-action lawsuit on behalf of prisoners, the conditions in the “falling apart” West Compound of the 178-year-old Trenton facility. Ross says it has poor ventilation, excessive heat and cold, leaking pipes, rodent and insect infestations, and fire-safety deficiencies, among other problems.

Kerness also was involved in bringing to light the particularly vicious conditions that alleged gang members suffered in a “high risk” Security Threat Group Management Unit of Newark’s huge Northern State Prison. Reports of the “use of physical, chemical, and psychological abuse” came to her “during the entire 12 years” the gang unit remained open, she writes in “Torture in United States Prisons.”

The unit was shut down in 2010 after prisoner Omar Broadway, a Bloods gang member, used a camera smuggled in by a guard to secretly film abusive treatment of prisoners. His video, with scenes of guards pepper-spraying and beating prisoners, was shown at the 2008 Tribeca Film Festival and, in 2010, on HBO. Kerness says many of the Northern State prisoners were transferred to ad seg units in other New Jersey prisons.

### The Future of Anti-solitary Work

KERNESS WELCOMES THE EMBRACE IN recent years of the anti-solitary cause by mainstream groups such as the National Religious Campaign Against Torture – “they’re doing dynamite.” She believes

#### LAW OFFICES OF

**ELMER ROBERT KEACH, III**



Law Offices of Elmer Robert Keach, III, PC  
One Pine West Plaza, Suite 109  
Washington Avenue Extension  
Albany, NY 12205-5531  
518.434.1718  
www.keachlawfirm.com

Attorney Bob Keach  
NITA Master Advocate  
Member, Multi-Million Dollar Advocates Forum  
Outside Counsel, Prison Legal News  
National Practice

### Experienced Civil Rights Attorney dedicated to seeking justice for those who are incarcerated

*Custodial Death Cases • Wrongful Arrest and Incarceration  
Medical Indifference Cases • Corrections and Police Brutality  
Sexual Abuse and Assault • Illegal Strip Searches  
Class Actions • First Amendment Litigation (Northeast Only)*

Reasonable Hourly Rates for: Criminal Defense, Appeals,  
Post-Conviction Relief, Habeas Corpus

**WHEN YOU OR A LOVED ONE HAVE BEEN WRONGED,  
YOU HAVE A VOICE.**

Attorney Keach prefers all inquiries by mail to be typed, and limited to five pages.  
DO NOT SEND ORIGINAL DOCUMENTS OR ORIGINAL MEDICAL RECORDS.  
Make sure to exhaust your administrative remedies and comply with state law notice requirements, if applicable, to preserve state law intentional tort/negligence claims.

describing solitary confinement as torture is the angle to accentuate. She has written that American legitimization of torture presents the country with “a spiritual crisis.”

She sees welcome developments, too, in law schools, especially with their students. She hopes “we will begin to see lawyers with a more progressive” bent. At present, progressive lawyers are “still a very small group.”

But most important to the anti-solitary battle, she says, are “the people inside,” such as Lutalo, who stimulated her activism.

As for her future, “I wouldn’t know how else to live,” Kerness says, other than a life

of activism, despite the slowness of change. Years ago, “I almost did give it up because I was alone.” That was “right at the moment I met Ojore.”

Hers has been a difficult crusade, too, because it’s “always been a struggle financially.” To be an activist for social change “costs money personally” – those collect calls received at home from prisoners, for example.

In a telephone interview, Ross, who has worked with Kerness on prison issues for 10 years, sums her up: “She’s very smart. She’s very articulate. She writes very well because she thinks very well. She has a passion for justice. She’s not afraid to confront the most difficult problems.”

Later, by email, Ross adds: “Because

she has persisted in this difficult and stressful work for so long, she brings the wisdom of memory.”

Kerness says she’s not discouraged, but she’s no Pollyanna about ending widespread solitary confinement. During her decades of work on prison issues she saw the American prison system become ever more repressive. “I can only hope,” she says of the future.

Whatever the future, “I will spend as much time as I can” working on these issues. “If there’s activism in you, you do it until you drop.” ■

*Lance Tapley is a Maine-based freelance writer. This article was first published by Solitary Watch ([www.solitarywatch.com](http://www.solitarywatch.com)) in November 2012; it is reprinted with permission.*

## **Preliminary Injunction Entered in PLN Censorship Suit Against Ventura County, California**

ON MAY 29, 2014, IN A SIGNIFICANT victory for the First Amendment rights of prisoners and those who correspond with them, the U.S. District Court for the Central District of California granted a preliminary injunction barring Ventura County’s jail system from enforcing a “postcard only” policy that prohibits prisoners from receiving mail in envelopes.

“We are very pleased the judge is upholding the constitution,” said *Prison Legal News* editor Paul Wright.

The preliminary injunction was the latest in a series of successful legal actions filed by PLN challenging unduly restrictive mail policies implemented in jails nationwide, which courts have repeatedly found are not justified by a rational penological purpose. [See: *PLN*, Jan. 2014, p.42; Nov.

2013, p.24; Sept. 2013, p.40].

After considering the parties’ arguments, the federal district court found that Ventura County’s “restrictive mail policies violate [PLN’s] First Amendment right to communicate with inmates,” and that the jail system’s “practice of rejecting mail without providing notice and an opportunity to appeal” violates the Fourteenth Amendment.

The court ordered the defendants to “suspend enforcement of the postcard-only policy for incoming mail within 21 days” and “give senders of rejected mail written notice and an opportunity to appeal the rejection decision.” Further, the jail “shall not reject mail for containing ‘suggestive’ content, Xeroxed material, or subscription order forms.”

The district court noted that “[p]ublishers have a First Amendment right to communicate with prisoners by mail,” citing *Prison Legal News v. Lehman*, 397 F.3d 692 (9th Cir. 2000).

In analyzing PLN’s motion for a preliminary injunction, the court applied the test set forth in *Turner v. Safley*, 482 U.S. 78 (1987), examining four factors to determine whether a regulation is “reasonably related to legitimate penological interests.”

Although Ventura County cited security concerns to justify its postcard-only policy, the district court wrote that “our deference to the administrative expertise and discretionary authority of correctional officials must be schooled, not absolute.”

The court noted the county jail system

had allowed prisoners to receive mail in envelopes until 2011, and had presented no evidence indicating it could not do so again because, as with letters, it still had to inspect postcards for contraband. Further, most other federal, state and county correctional facilities allow prisoners to receive mail in envelopes without compromising institutional security.

The district court held the county had not met its burden to show a rational basis for its postcard-only policy in light of the policy’s obvious impact on PLN’s First Amendment rights, citing *Prison Legal News v. Columbia County*, 942 F.Supp.2d 1068 (D. Or. 2013) [*PLN*, June 2013, p.42].

In granting the preliminary injunction, the court determined, based upon the evidence presented, that PLN was likely to prevail on the merits in the case – a clear victory for the First Amendment rights of not only prisoners and publications such as PLN, but also for the free-flow of information and correspondence between people who are incarcerated and their friends, family members and others on the outside.

PLN is represented by the San Francisco law firm of Rosen Bien Galvan & Grunfeld, LLP and attorney Brian Vogel. The case remains pending. See: *Prison Legal News v. County of Ventura*, U.S.D.C. (C.D. Cal.), Case No. 2:14-cv-00773-GHK-E. ■

Additional source: *Ventura County Star*

### **TYPING**

#### **SERVICES**

**Provided since 1998**

**Specifically designed, with special rates for the incarcerated person.**

**Black / Color Printing and Copying**

**SEND A SASE FOR A “FREE” PRICE LIST AND MORE INFORMATION TO:**

**LET MY FINGERS DO YOUR TYPING**

**Sandra Z. Thomas (dba)**

**P O Box 4178**

**Winter Park, Florida 32793-4178**

**Phone: 407-579-5563**

**Special Offer: \$2.00 off first order.**

**Special offer void after: 12/31/2014**





Stay in touch with a good Magazine!  
Get 5 Full One Year Subscriptions

**ONLY \$20!**  
+ \$4.99 p&h

Check your 5 magazines and underline three backup choices (in case of unavailability)

**"BEST DEAL ON THE POUND!"**

**July 4 Special!**  
July 1-Sep 31, 2014  
1 FREE Subscription  
per paid 5 for 20 order!!  
Check 6 magazines instead of 5!

- ☐ ALLURE (12)
- ☐ AMERICAN PHOTO (6)
- ☐ ARTHRITIS SELF MANAGEMENT (6)
- ☐ ARTHRITIS TODAY (6)
- ☐ AUTOMOBILE (12)
- ☐ BACKPACKER (9)
- ☐ BETTER HOMES & GARDENS (12)
- ☐ BLACK ENTERPRISE (12)
- ☐ BOATING (10)
- ☐ BOATING WORLD (9)
- ☐ BON APPETIT (12)
- ☐ BOWHUNT AMERICA (6)
- ☐ BOWHUNTING WORLD (9)
- ☐ BRIDAL GUIDE (6)
- ☐ CABELA'S OUTFITTER JOURNAL (6)
- ☐ CAR & DRIVER (12)
- ☐ CHARISMA (12)
- ☐ COMPLEX MAGAZINE (6)

- ☐ CONDE NAST TRAVELER (12)
- ☐ COSMOPOLITAN (12)
- ☐ CRUISING WORLD (12)
- ☐ CYCLE WORLD (12)
- ☐ DETAILS - FASHION (10)
- ☐ DIABETES SELF MANAGEMENT (6)
- ☐ DIGITAL PHOTO (7)
- ☐ DIRT RIDER (12)
- ☐ EBONY (12)
- ☐ ELLE (12)
- ☐ ELLE DECOR (10)
- ☐ ENTREPRENEUR (12)
- ☐ ESQUIRE (10)
- ☐ EVERY DAY WITH RACHAEL RAY (10)
- ☐ FAMILY CIRCLE (12)
- ☐ FAMILY FUN (10)
- ☐ FAST COMPANY (10)
- ☐ FIELD & STREAM (12)
- ☐ FITNESS (10)
- ☐ FLORIDA SPORT FISHING (6)
- ☐ FLYING (12)
- ☐ FOUR WHEEL & OFF ROAD (12)
- ☐ FOUR WHEELER (12)
- ☐ FREESKIER (6)
- ☐ GLAMOUR (12)
- ☐ GOLF DIGEST (12)
- ☐ GOLF TIPS (7)
- ☐ GOLFWEEK (38)
- ☐ GOOD HOUSEKEEPING (12)
- ☐ HARPERS BAZAAR (10)

- ☐ HOT BIKE (12)
- ☐ INC (12)
- ☐ INSTRUCTOR K - 8 (6)
- ☐ ISLANDS MAGAZINE (8)
- ☐ LATINA (10)
- ☐ LIFE EXTENSION (13)
- ☐ LOG HOME LIVING (9)
- ☐ LUCKY (10)
- ☐ MARIE CLAIRE (12)
- ☐ MARLIN (8)
- ☐ MEN'S FITNESS (10)
- ☐ MEN'S JOURNAL (12)
- ☐ MIDWEST LIVING (6)
- ☐ MINISTRY TODAY (6)
- ☐ MORE (10)
- ☐ MOTOR TREND (12)
- ☐ MOTORCYCLIST (12)
- ☐ NATURAL HEALTH (6)
- ☐ NYLON GUYS (6)
- ☐ NYLON MAGAZINE (10)
- ☐ OK! MAGAZINE (52)
- ☐ OLD HOUSE JOURNAL (8)
- ☐ OUTDOOR LIFE (12)
- ☐ OUTDOOR PHOTOGRAPHER (11) NR\*
- ☐ OUTSIDE (12)
- ☐ PARENTS (12)
- ☐ PLANE & PILOT (12) NR\*
- ☐ POPULAR PHOTOGRAPHY (12)
- ☐ POPULAR SCIENCE (12)
- ☐ PREDATOR EXTREME (6)

- ☐ RED BULLETIN MAGAZINE (12)
- ☐ REDBOOK (11)
- ☐ ROAD & TRACK (10)
- ☐ ROLLING STONE (26)
- ☐ SALT WATER SPORTSMAN (10)
- ☐ PARENT & CHILD (8)
- ☐ SELF (12)
- ☐ SEVENTEEN (10)
- ☐ SHAPE (12)
- ☐ SIEMPRE MUJER (6)
- ☐ SKI MAGAZINE (6)
- ☐ SNOWBOARD (4)
- ☐ SPORT RIDER (10)
- ☐ TEEN VOGUE (10)
- ☐ TENNIS (6)
- ☐ THE ATLANTIC MONTHLY (10)
- ☐ TIMBER HOME LIVING (6)
- ☐ TOWN & COUNTRY (10)
- ☐ UPTOWN (6)
- ☐ US WEEKLY (52)
- ☐ VERANDA (6)
- ☐ W MAGAZINE (10)
- ☐ WATERFOWL & RETRIEVER (2)
- ☐ WEIGHT WATCHERS (6)
- ☐ WHITETAIL JOURNAL (6)
- ☐ WIRED (12)
- ☐ WOMAN'S DAY (12)
- ☐ WORKING MOTHER (6)
- ☐ YACHTING (12)
- ☐ YOGA JOURNAL (9)

OK TO COPY

\* No Renewal

"Tell your Friends and Families!"

\*\*\*\*DUE TO PUBLISHER PROCESSING TIMES, WE WILL NOT UNDER ANY CIRCUMSTANCES CHECK WITH ANY PUBLISHER ABOUT THE STATUS OF ANY MAGAZINE SUBSCRIPTION UNTIL AFTER 90 DAYS HAVE PASSED FROM THE DATE OF PROCESSING YOUR ORDER! NO EXCEPTIONS!\*\*\*\*

Name and Inmate # (please print, maximum 24 characters):													
Address:													
City:								State:				Zip:	

Allow 6-8 weeks for delivery. Pay by Check, Money Order or Order Online and use Credit Card or PayPal. Keep Address Short!

P.O. Box 2063, Fort Walton Beach, FL 32549  
www.InmateMagazineService.com



Stay in touch with a good Magazine!  
Get 5 Full One Year Subscriptions

**ONLY \$20!**  
+ \$4.99 p&h

Check your 5 magazines and underline three backup choices (in case of unavailability)

**"BEST DEAL ON THE POUND!"**

**July 4 Special!**  
July 1-Sep 31, 2014  
1 FREE Subscription  
per paid 5 for 20 order!!  
Check 6 magazines instead of 5!

- ☐ ALLURE (12)
- ☐ AMERICAN PHOTO (6)
- ☐ ARTHRITIS SELF MANAGEMENT (6)
- ☐ ARTHRITIS TODAY (6)
- ☐ AUTOMOBILE (12)
- ☐ BACKPACKER (9)
- ☐ BETTER HOMES & GARDENS (12)
- ☐ BLACK ENTERPRISE (12)
- ☐ BOATING (10)
- ☐ BOATING WORLD (9)
- ☐ BON APPETIT (12)
- ☐ BOWHUNT AMERICA (6)
- ☐ BOWHUNTING WORLD (9)
- ☐ BRIDAL GUIDE (6)
- ☐ CABELA'S OUTFITTER JOURNAL (6)
- ☐ CAR & DRIVER (12)
- ☐ CHARISMA (12)
- ☐ COMPLEX MAGAZINE (6)

- ☐ CONDE NAST TRAVELER (12)
- ☐ COSMOPOLITAN (12)
- ☐ CRUISING WORLD (12)
- ☐ CYCLE WORLD (12)
- ☐ DETAILS - FASHION (10)
- ☐ DIABETES SELF MANAGEMENT (6)
- ☐ DIGITAL PHOTO (7)
- ☐ DIRT RIDER (12)
- ☐ EBONY (12)
- ☐ ELLE (12)
- ☐ ELLE DECOR (10)
- ☐ ENTREPRENEUR (12)
- ☐ ESQUIRE (10)
- ☐ EVERY DAY WITH RACHAEL RAY (10)
- ☐ FAMILY CIRCLE (12)
- ☐ FAMILY FUN (10)
- ☐ FAST COMPANY (10)
- ☐ FIELD & STREAM (12)
- ☐ FITNESS (10)
- ☐ FLORIDA SPORT FISHING (6)
- ☐ FLYING (12)
- ☐ FOUR WHEEL & OFF ROAD (12)
- ☐ FOUR WHEELER (12)
- ☐ FREESKIER (6)
- ☐ GLAMOUR (12)
- ☐ GOLF DIGEST (12)
- ☐ GOLF TIPS (7)
- ☐ GOLFWEEK (38)
- ☐ GOOD HOUSEKEEPING (12)
- ☐ HARPERS BAZAAR (10)

- ☐ HOT BIKE (12)
- ☐ INC (12)
- ☐ INSTRUCTOR K - 8 (6)
- ☐ ISLANDS MAGAZINE (8)
- ☐ LATINA (10)
- ☐ LIFE EXTENSION (13)
- ☐ LOG HOME LIVING (9)
- ☐ LUCKY (10)
- ☐ MARIE CLAIRE (12)
- ☐ MARLIN (8)
- ☐ MEN'S FITNESS (10)
- ☐ MEN'S JOURNAL (12)
- ☐ MIDWEST LIVING (6)
- ☐ MINISTRY TODAY (6)
- ☐ MORE (10)
- ☐ MOTOR TREND (12)
- ☐ MOTORCYCLIST (12)
- ☐ NATURAL HEALTH (6)
- ☐ NYLON GUYS (6)
- ☐ NYLON MAGAZINE (10)
- ☐ OK! MAGAZINE (52)
- ☐ OLD HOUSE JOURNAL (8)
- ☐ OUTDOOR LIFE (12)
- ☐ OUTDOOR PHOTOGRAPHER (11) NR\*
- ☐ OUTSIDE (12)
- ☐ PARENTS (12)
- ☐ PLANE & PILOT (12) NR\*
- ☐ POPULAR PHOTOGRAPHY (12)
- ☐ POPULAR SCIENCE (12)
- ☐ PREDATOR EXTREME (6)

- ☐ RED BULLETIN MAGAZINE (12)
- ☐ REDBOOK (11)
- ☐ ROAD & TRACK (10)
- ☐ ROLLING STONE (26)
- ☐ SALT WATER SPORTSMAN (10)
- ☐ PARENT & CHILD (8)
- ☐ SELF (12)
- ☐ SEVENTEEN (10)
- ☐ SHAPE (12)
- ☐ SIEMPRE MUJER (6)
- ☐ SKI MAGAZINE (6)
- ☐ SNOWBOARD (4)
- ☐ SPORT RIDER (10)
- ☐ TEEN VOGUE (10)
- ☐ TENNIS (6)
- ☐ THE ATLANTIC MONTHLY (10)
- ☐ TIMBER HOME LIVING (6)
- ☐ TOWN & COUNTRY (10)
- ☐ UPTOWN (6)
- ☐ US WEEKLY (52)
- ☐ VERANDA (6)
- ☐ W MAGAZINE (10)
- ☐ WATERFOWL & RETRIEVER (2)
- ☐ WEIGHT WATCHERS (6)
- ☐ WHITETAIL JOURNAL (6)
- ☐ WIRED (12)
- ☐ WOMAN'S DAY (12)
- ☐ WORKING MOTHER (6)
- ☐ YACHTING (12)
- ☐ YOGA JOURNAL (9)

OK TO COPY

\* No Renewal

"Tell your Friends and Families!"

\*\*\*\*DUE TO PUBLISHER PROCESSING TIMES, WE WILL NOT UNDER ANY CIRCUMSTANCES CHECK WITH ANY PUBLISHER ABOUT THE STATUS OF ANY MAGAZINE SUBSCRIPTION UNTIL AFTER 90 DAYS HAVE PASSED FROM THE DATE OF PROCESSING YOUR ORDER! NO EXCEPTIONS!\*\*\*\*

Name and Inmate # (please print, maximum 24 characters):													
Address:													
City:								State:				Zip:	

Allow 6-8 weeks for delivery. Pay by Check, Money Order or Order Online and use Credit Card or PayPal. Keep Address Short!

P.O. Box 2063, Fort Walton Beach, FL 32549  
www.InmateMagazineService.com



# Oregon Parole Board: "Don't Have to Explain Nothing to Nobody"

**F**OR AT LEAST THE FIFTH TIME, A STATE court has ordered the Oregon Board of Parole and Post-Prison Supervision (Board) to provide more than boilerplate reasons for its decisions. There is little reason to believe, however, that the Board has any intention of complying.

Oregon law requires the Board to "state in writing the detailed bases of its decisions." The Board is exempt, however, from a statutory requirement to make findings of fact and conclusions of law.

The Oregon Court of Appeals reversed a Board decision in 1997, holding that despite the statutory exemption, the Board was required to "make findings of fact and provide an explanation as to why its findings lead to the conclusions that it reaches." See: *Martin v. Board of Parole*, 147 Ore. App. 37, 934 P.2d 626 (Or. Ct. App. 1997). The Oregon Supreme Court affirmed, holding that the Board must provide "some kind of an explanation connecting the facts of the case (which would include the facts found, if any) and the result reached." See: *Martin v. Board of Parole*, 327 Ore. 147, 957 P.2d 1210 (Or. 1998). This is commonly referred to as "the substantial-reason requirement."

In 1999, the Board asked the Oregon legislature to overrule *Martin*. The proposed law change expressly relieved the Board of a duty to "explain how [its] order is supported by the facts and the evidence in the record."

The Oregon judiciary, however, did not

appreciate such overt disrespect for its authority. James Nass, appellate legal counsel for the Oregon Supreme Court and Court of Appeals, opposed the Board's proposed legislation, SB 401.

As the bill advanced through the legislature, the judiciary's opposition grew "more vociferous." Nass called the bill "bad public policy" and warned it "will decrease the quality of judicial review" and "increase the work load of the appellate courts."

He pulled no punches. "There is nothing subtle about this bill," he said. "The bill starkly presents this policy issue: Should any governmental agency be exempt from explaining how its decisions are supported by the evidence in the record? Apparently these Boards would say yes. Under SB 401, their motto would be: 'We're the Board. We don't have to explain nothing to nobody.'"

Nass continued: "According to these Boards, they shouldn't have to explain their decisions to inmates whose fates lie in their hands. No problem there, of course, because few people have sympathy for criminals. But, this bill also means that the Boards would not have to explain their decisions to victims or victims' families. They would not have to explain their decisions to the media. They wouldn't have to explain their decisions to any legislator who might be interested in a particular case. And, they wouldn't have to explain their decisions to the courts to aid in judicial review of those decisions."

In the end, a compromise was struck between Oregon's Attorney General, the Chief Justice of the Oregon Supreme Court and the judge who authored the *Martin* decision. The proposed bill was gutted and replaced with a single sentence that was added to ORS 144.335(3): "The order of the board need not be in any special form, and the order is sufficient for purposes of judicial review if it appears that the board acted within the scope of the board's authority."

Apparently believing the legislation allowed it to conduct business as usual, the Board continued to offer only boilerplate reasons for its parole decisions.

On December 28, 2007, the Oregon Supreme Court again reminded the Board of its responsibility under *Martin* – i.e., to set forth in its orders the reasoning that leads from the facts it has found to the conclusions it draws from those facts. See: *Gordon v. Board of Parole*, 343 Ore. 618, 175 P.3d 461 (Or. 2007).

Just fourteen days later, a trial court granted a victim's request to vacate a decision by the Board to release the man imprisoned for raping her. Relying in part on *Gordon*, the court held that the Board's "bare conclusions are simply not enough... the Board's findings, reasoning, and conclusions must demonstrate that it acted in a rational, fair, and principled manner, and not on an arbitrary or ad hoc basis."

Steven R. Powers, then Board Chair-

## Support Prison Legal News with these beautiful gifts!

CALL **561-360-2523**, MAIL ORDER OR USE WEB FORM  
[HTTP://WWW.PRISONLEGALNEWS.ORG/](http://WWW.PRISONLEGALNEWS.ORG/)



## Hand Embroidered Greeting Cards



Made by women prisoners in Cochabamba, Bolivia. Each card is individually made, no two are identical. The prisoners are paid a fair wage for each card and keep 100% of the pay to support themselves and their families. Local fair trade non-profits in Bolivia supply the materials for the cards. **\$6.**

**Hand Made Hemp Tote Bag** All natural hemp tote bag hand made in Vermont with the Prison Legal News logo on both sides, in red and black. Great for carrying books, groceries, and more! Stamped on the inside that no sweatshop, prison or child labor was used in its manufacture. **\$12.**

\$6 shipping and handling for orders under \$50.

man and now Deputy General Counsel to Oregon Governor John Kitzhaber, defended the Board's standard language in its decisions, claiming that detailed findings could give prisoners more ammunition for appeals.

Bronson James, the public defender who represented the prisoner whose release was vacated following a legal challenge by the rape victim, said that offenders and their attorneys shared the objections voiced by the victim and her lawyer.

"We have been complaining for decades with nobody taking us seriously," James said in August 2008.

He argued then that the Board should "issue detailed rulings that explain why it denied parole rather than the typical two-sentence decision that includes nothing but boilerplate reasoning."

The Board's response, however, indicated that it still took the position that it didn't "have to explain nothing to nobody."

On November 18, 2009, the Oregon Court of Appeals again reversed a parole decision, finding the Board had violated the substantial-reason requirement. Citing the same boilerplate language that was found in

every Board order, the appellate court said, "the board has provided only a conclusion: 'Based on the doctor's report and diagnosis, coupled with all the information that the board is considering, it is reasonably probable that petitioner would violate his parole or a law.... That is an announcement, not an explanation. It gives us nothing to judicially review. Our duty is to evaluate the board's logic, not to supply it.'" See: *Castro v. Board of Parole*, 232 Ore. App. 75, 220 P.3d 772 (Or. Ct. App. 2009).

Of course, nothing changed – the Board did not make even the slightest variation in its standard language.

On September 5, 2013, the Court of Appeals once again held that the Board is required "to provide an inmate with some explanation of the rationale for concluding that" release on parole should be postponed.

Rejecting the Board's argument that the 1999 "Martin amendment" exempts it from the substantial-reason requirement, the appellate court concluded that the Board's "reading of the statute runs counter to its text, context, and legislative history."

Following *Martin*, *Gordon* and *Castro*, the Court of Appeals wrote "that the board

used the same boilerplate wording rejected in *Castro*," and held "it is apparent that the board's order references the contents of the entire record, as opposed to particular parts of the record that were pivotal." As such, "the order ... offers a mere conclusion and does not permit us 'to determine if the board's findings, reasoning, and conclusions demonstrate that it acted in a rational, fair, and principled manner in deciding to defer petitioner's parole release.'" One appellate judge dissented from the majority opinion. See: *Jenkins v. Board of Parole*, 258 Ore. App. 430, 309 P.3d 1115 (Or. Ct. App. 2013).

Given that the Board has repeatedly ignored two state Supreme Court decisions, a previous Court of Appeals decision and a trial court order on this very issue, there is little reason to believe that yet another judicial ruling is going to alter its behavior.

Apparently the rule of law and the authority of the courts mean little when you're the Board and believe you "don't have to explain nothing to nobody."

However, the Oregon Supreme Court, which granted review in *Jenkins* on January 30, 2014, may have the final word regarding the Board's reasoning for its decisions. ■

## D&W helping you

This service is only for NY and CA state prisoners.

*Is it difficult to get in contact with your loved ones, friends, or attorneys?*

We have operators on stand-by waiting for phone calls in order to connect with anyone within the United States and internationally. Once you open an account with us, our operators will accept your collect call and will connect you with the person that you want to speak to. An account can be opened with no less than \$10.00. Once we receive your check or money order, you will be notified via regular mail with your new account #, account balance and telephone number for you to call us.

### For New York State Prisons only: (Flat Rate) within the U.S.

Up to 15 minutes-----\$2.50

16 to 30 minutes-----\$5.00

### Prices for international calls: (Flat Rate)

Up to 15 minutes-----\$4.00

16 to 30 minutes-----\$8.00

### For California State Prisons only: (Flat Rate) within the U.S.

Up to 15 minutes-----\$3.50

16 to 30 minutes-----\$7.20

### Prices for International calls: (Flat Rate)

Up to 15 minutes-----\$5.10

16 to 30 minutes-----\$10.20

This service is for all federal, state and county prisoners.

Get a local number for \$4.99 in the first month and then pay \$9.99 all months after that, for unlimited calls. Just send a payment of five dollars and the number you are calling with that person's name. Then we will get in contact with that person and give them a local number so you can start calling.

No contract and same day activation. Local numbers only for the U.S. Contact us: [Inmatesolution@aol.com](mailto:Inmatesolution@aol.com). We speak English and Spanish.

Send payment to: **D&W helping you**

P.O. Box 1594, Allentown, PA 18105

Or call # 484-809-5235

## Learn The Law!



It's a **POWERFUL** influence in your life.

Choose education to help yourself and others. Blackstone's Independent Study Paralegal Program offers you the opportunity to be productive while serving time.

Only  
**\$30.00**  
Per Month

- Learn Civil & Criminal Law
- Learn Legal Research
- 110 Years of Legal Training Experience
- Study in Your Spare Time
- Affordable Tuition, Easy Payment Plan

☐ **Yes! I'd like to learn more** ☐ **Paralegal Course**  
Please rush me **FREE** course information.

Name \_\_\_\_\_ Doc# \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**Blackstone**  
**Career Institute**

Your tuition cost covers your entire program including all textbooks, study guides, exam and homework evaluation services, and your certificate.

**P.O. Box 3717 • Allentown, PA 18106**

# Prisoners Unlikely to Benefit from New, Highly Effective Hepatitis C Treatment

by Greg Dober

**H**EPATITIS C (HCV) IS A BLOOD-BORNE virus that is typically spread through intravenous drug use (i.e., sharing needles), tattooing with non-sterile needles, and sharing razors, toothbrushes, nail clippers or other hygiene items that may be exposed to blood. It is often a chronic disease and, if left untreated, can lead to severe liver damage.

Recent good news in the battle against HCV, in the form of two new drugs that are highly effective in eliminating the virus, is tempered by the fact that the companies that produce the drugs have priced them at \$60,000 to \$80,000 per 12-week course of treatment. This high cost prices the medications beyond the reach of most prison and jail systems – which is especially troubling considering that a substantial number of prisoners are infected with HCV.

The new drugs, approved by the FDA in late 2013, are simeprevir, branded as

Olysio and manufactured by Janssen Therapeutics (a Johnson & Johnson company), and sofosbuvir, branded as Sovaldi and manufactured by Gilead Sciences. Based on clinical trials, Sovaldi has an 84-96% cure rate while Olysio has an 80-85% cure rate. Both drugs are used in combination with other HCV anti-viral medications, peginterferon alfa and/or ribavirin, and their cure rates vary depending on HCV genotype – specific variations of the virus.

Unlike the current treatments for hepatitis C, Olysio and Sovaldi have fewer side effects, greater efficacy and reduce treatment durations by up to 75% (12 to 24 weeks rather than 48 weeks). In addition, the new drugs are administered orally rather than by injections. However, given tight corrections budgets and the high cost of the new HCV medications – Sovaldi costs approximately \$1,000 per pill – getting them

into prisons and jails ranges from difficult to impossible.

According to the Centers for Disease Control, “The prevalence of HCV infection in prison inmates is substantially higher than that of the general U.S. population. Among prison inmates, 16%-41% have ever been infected with HCV, and 12%-35% are chronically infected, compared to 1%-1.5% in the uninstitutionalized U.S. population.”

Josiah Rich, director of the Center for Prisoner Health and Human Rights at the Miriam Hospital Immunology Center in Rhode Island, noted that “With more than 10 million Americans cycling in and out of prisons and jails each year, including nearly one of every three HCV-infected people, the criminal justice system may be the best place to efficiently identify and cure the greatest number of HCV-infected people.”

- \* **Post-Conviction Specialists (Habeas Corpus/2254/2255/AEDPA/Procedural Bars/Coram Nobis/PRP/Certiorari/Sentence Modifications/DNA and more).**
- \* **All 50 States and D.C., Federal District Courts, Federal Courts of Appeal, and Supreme Court.**
- \* **Experts and specialists available.**
- \* **Professional staff with extensive State and Federal post conviction experience.**
- \* **Special programs available for Veterans.**
- \* **Pre/Post Convictions/Pleas ONLY .**
- \* **Payment plans available.**
- \* **Now accepting Credit Cards.**
- \* **FREE initial consultation.**

**LEGAL INSIGHTS INC.**

**25602 ALICIA PARKWAY SUITE 323**

**LAGUNA HILLS, CA 92653**

**714-941-0578**

**INFO@LEGALINSIGHTS.ORG**

**WWW.LEGALINSIGHTS.ORG**

A CALIFORNIA 501(C)(3) NON-PROFIT ORGANIZATION

**mSP | LAW**



**Michael Soukup**  
Licensed in Wisconsin and Illinois

**Matthew Pinix\***  
Licensed in Wisconsin

## Appealing a Conviction? Hire an Appellate Attorney.

You wouldn't hire a **heart surgeon** to perform **brain surgery**. Don't hire a **trial attorney** to handle **your appeal**. Hire someone who focuses on **criminal appeals**.

Hire the **Law Office of Matthew S. Pinix**, attorneys with more than 10-years' combined experience handling **criminal appeals** in **Wisconsin** and **Illinois**.

**Law Office of Matthew S. Pinix, LLC**  
1200 East Capitol Drive, Suite 220  
Milwaukee, Wisconsin 53211  
(414) 963-6164  
[www.pinixlawoffice.com](http://www.pinixlawoffice.com)

- » Rated by Super Lawyers®
- » Rated by avvo.com
- » Better Business Bureau accredited



Despite the need for improved drugs to treat prisoners with hepatitis C, the cost of the new medications is prohibitive for prisons and jails. Rich estimated that treating all prisoners currently infected with HCV would cost \$33 billion.

"I agree with the premise that prisons are an important point to address this problem," said Dr. Joe Goldenson, director of health services for San Francisco's jail system. "But this has to be addressed from an overall strategy of public health and the funding has to come out of that system. Corrections is not a place that can handle these costs."

Since 2011, spending on HCV treatment in correctional settings has climbed rapidly. The increase has been attributed to the introduction of two HCV drugs produced by pharmaceutical companies Merck and Vertex. However, with the recent introduction of the new and more effective treatments, costs are expected to rise again.

The federal Bureau of Prisons (BOP), which houses approximately 216,800 prisoners, may have an easier time affording the drugs. Through a U.S. Department of

Veterans Affairs program, the BOP will receive a 44% discount on Olysio and Sovaldi. In February 2014, the federal prison system began making the new HCV medications available to some prisoners.

According to a May 2014 BOP clinical practice guidelines report, titled "Interim Guidance for the Management of Chronic Hepatitis C Infection," the use of sofosbuvir and simeprevir in combination with peginterferon and/or ribavirin is the "preferred treatment regimen." State prisoners, however, may not be as fortunate.

In Washington State, prison officials have established a committee of health-care providers that meets twice a month to review HCV cases for treatment eligibility with the new drugs. In April 2014, Kevin Bovenkamp, the Washington DOC's assistant secretary for health services, said that of ten cases reviewed by the committee, none were approved for treatment.

Dr. Lara Strick, an infectious disease specialist for the Washington DOC, told a reporter from *The News Tribune* that HCV is a progressive disease and not all prisoners need immediate treatment. She also noted that it might be better for certain patients

to wait until newer treatments, with even fewer side effects, are available.

However, it is likely that future HCV treatments that are more effective and have fewer side effects than Olysio and Sovaldi will demand an even higher price, and patients who are currently denied treatment due to fiscal constraints will eventually face the same cost-based roadblocks in the future. On the other hand, additional HCV drugs may lead to greater competition and thus lower prices. Merck, for example, is currently developing a two-drug hepatitis C regimen that reportedly has a 98% cure rate.

Dr. Strick acknowledged that future pricing of new HCV treatments may dictate whether the epidemic of hepatitis C among prisoners can be eradicated as a public health issue.

Since 2010, before Olysio and Sovaldi were available, the cost of HCV treatment for the Washington DOC had more than doubled by 2013 – rising from approximately \$834,000 per year to \$1.8 million annually. The DOC is trying to determine if a discount from the manufacturers of the new HCV drugs can be negotiated. Gilead

## AHRONY, GRAHAM, & ZUCKER, LLP

### A POST-CONVICTION LAW FIRM

**Appeals**

**Habeas Corpus  
Writs (Factual  
Innocence)**

**Parole Hearings**

**SB 260 Hearings**

**MDO Hearings**

**Re-Sentencing**



**Bruce Zucker**

**Orly Ahrony**

**Ian Graham**

**Probation Violations**

**Rap Sheet Correction**

**Prison &  
Parole Issues**

**115 Discipline Issues**

**California & Federal  
Courts**

12400 WILSHIRE BLVD. SUITE 400 • LOS ANGELES, CA 90025

TEL. (310) 979-6400 • WWW.AHRONYGRAHAM.COM

California Cases Only • Unsolicited Original Documents Will Not Be Returned

This is an Advertisement for Legal Services

## HCV Treatment (cont.)

has defended its pricing for Sovaldi, citing the drug's potential to prevent longer-term costs resulting from HCV such as liver transplants and treatment for cirrhosis or cancer.

In Illinois, prison officials estimate there are approximately 100 to 150 prisoners afflicted with HCV in each of the state's prisons. They acknowledge that not every HCV-positive prisoner will receive the new drugs; consideration will be given to severity of medical condition, length of sentence and overall health of each prisoner. Still, state corrections officials indicated that even if one-third of the prisoners with HCV receive the new medications, treatment costs would increase to \$61 million annually from the current \$8 million.

Other states like New York and Wisconsin are dispensing the new HCV drugs on a limited case-by-case basis. A spokesperson for the New York DOC told the *Wall Street Journal* that nearly 60 prisoners with the most serious cases of HCV had begun treatment with the new drugs. Oregon is reportedly providing the new medications to HCV-positive prisoners with a life expectancy of under one year.

Although prison officials must provide adequate healthcare to prisoners with serious medical needs, as required by the Eighth Amendment pursuant to *Estelle v. Gamble*, 429 U.S. 97 (1976), failing to supply the new HCV drugs might not be considered deliberate indifference. Many of the court decisions regarding prison healthcare have required corrections officials to provide adequate treatment that meets

minimal constitutional standards – which is not necessarily the best care available. If the new drugs become the community standard of care for hepatitis C, though, the argument can be made that that standard should equally apply to prisoners.

Critics of making the new HCV medications available to prisoners argue the drugs may not be covered under health insurance plans for people who are not incarcerated; thus, prisoners would receive better treatment than those in the general population. Yet this ignores the reality that the less costly and older treatments for HCV currently available to prisoners are routinely denied. [See: *PLN*, July 2013, p.16; March 2013, p.36].

Prison medical officials can deny HCV treatment for a variety of reasons, including the length of a prisoner's sentence, if they have recently used or been found in possession of illegal drugs or alcohol, or have recently received tattoos. Thus, even should Olysio and Sovaldi become available in prison systems, it is unlikely that many prisoners will actually receive the costly medications.

Gilead has been criticized for pricing Sovaldi based on a scale relative to a country's per-capita income. For example, the drug is offered in Egypt at a 99% discount to the U.S. list price, resulting in treatment costs of approximately \$900. Therefore, a U.S. nongovernmental organization based in Egypt could more readily afford to treat Egyptian prisoners using Sovaldi than state prison officials could treat prisoners in the U.S. The company fails to take into account that many of the people infected with HCV in the United States live below the federal poverty level or are incarcerated, on

Medicaid or otherwise under the average per-capita income in the U.S.

Janssen Therapeutics spokesman Craig Stoltz said the company continues to "work with public and private payers and health systems" to make simeprevir available to "marginalized and underserved populations," including prisoners.

Eventually, the question of public health ethics must be asked and answered. By not providing the most effective treatment to HCV-positive prisoners, are we endangering the health of the general public? According to a study published in the March-April 2014 issue of *Public Health Reports*, prisoners represent 28.5-32.8% of the total HCV cases in the United States, based on 2006 data. Prisoners who are untreated, or not effectively treated, are more likely to infect others after they are released.

For Gilead Sciences and Janssen Therapeutics, however, that may be welcome news, because they can then sell their high-priced HCV drugs to even more patients. Until affordable HCV medications are made available to everyone who needs them – including prisoners – the hepatitis C epidemic might be slowed but will not be stopped. ■

*Gregory Dober has been a contributing writer for PLN since 2007.*

Sources: KOVR-TV, <http://sacramento.cbslocal.com>, [www.cbsnews.com](http://www.cbsnews.com), [www.pewstates.org](http://www.pewstates.org), *Public Health Reports* (March-April 2014), [www.kuow.org](http://www.kuow.org), *Quad-City Times*, *Wall Street Journal*, *The News Tribune*, [www.cdc.gov](http://www.cdc.gov), *Forbes*, *Reuters*, [www.elysio.com](http://www.elysio.com), [www.sovaldi.com](http://www.sovaldi.com), *BOP Clinical Practice Guidelines* (May 2014)



**FULTON & WELCH**  
TEXAS PAROLE  
ATTORNEYS

- o AFFORDABLE
- o PERSONALIZED PACKET
- o 2 HEARINGS
- o MEET WITH YOU & FAMILY

**"LET US GET YOU HOME SOONER"**

10701 Corporate Dr., Ste. 390,  
Stafford, Texas 77477

**Alexander Byrd Optics**

**Single Vision Eyeglasses Special**



Upgrade to photochromic/  
Transitions by adding \$69.99

All eyeglasses include free UV and Anti-scratch coatings (a \$29.95 value)

Bi-Focals for \$54.99 plus S&H a pair and new  
Two year anything happens warranty for \$25.00

Alexander Byrd Optics  
Po Box #1063  
Richland, WA 99352

To receive order form and details write:  
Contact us on CorriLinks at: [abyrdoptics@gmail.com](mailto:abyrdoptics@gmail.com)  
[www.abyrdoptics.com](http://www.abyrdoptics.com)





# Eighth Circuit: No Qualified Immunity for Detainee's Overdose Death

by Mark Wilson

**T**HE EIGHTH CIRCUIT COURT OF APPEALS held on September 20, 2013 that an Arkansas jail guard was not entitled to qualified immunity for his deliberate indifference to a detainee's serious medical condition which resulted in the detainee's death.

On December 18, 2008, Saline County deputy sheriff Stephen Furr arrested Johnny Dale Thompson, Jr. During the arrest, Deputy Furr discovered an empty Xanax bottle that indicated it had been filled with 60 pills two days earlier. Thompson, who was slurring his words, admitted to taking medication and slept in the patrol car, but was easily awakened at the jail.

Jail guard Ulenzen C. King conducted Thompson's booking process. King noted that Thompson appeared intoxicated; he asked to sit down but nearly fell out of the chair. He was unable to sign his name and "couldn't even answer questions that Officer King was asking him." King wrote "Too Intox to Sign" on the booking sheet.

Sometime after Thompson was placed

in a cell at 7:42 p.m., another detainee alerted King that Thompson needed help, but King did nothing.

At 9:09 p.m., King and another jailer entered Thompson's cell and discovered he was "cool to the touch, not breathing, and non-responsive." He was pronounced dead at a hospital around 20 minutes later.

An autopsy revealed that Thompson had ingested a cocktail of drugs, including hydrocodone, methadone and alprazolam. The medical examiner classified his death as accidental.

Thompson's mother filed suit in federal court against Saline County and several individual defendants. The district court granted qualified immunity to all the defendants except Furr and King; both then filed an interlocutory appeal.

The Eighth Circuit observed that its review was limited to determining whether Furr and King knew that Thompson had a serious medical need but deliberately disregarded that need.

The appellate court followed *Grayson v.*

*Ross*, 454 F.3d 802 (8th Cir. 2006) in holding that Furr lacked subjective knowledge that Thompson required medical attention. As such, it concluded that Furr was not deliberately indifferent to Thompson's medical needs and was entitled to qualified immunity.

The Court of Appeals found, however, that "*Ross* does not compel the same conclusion for Officer King." Rather, Thompson "presented a noticeably more intoxicated condition during his encounter with Officer King than the detainee in *Ross*."

Given the information available to King when Thompson was booked into the jail, the Eighth Circuit affirmed the district court's denial of qualified immunity, holding that "a reasonable jury could find that ... King had subjective knowledge of a serious medical need and deliberately disregarded that need." See: *Thompson v. King*, 730 F.3d 742 (8th Cir. 2013).

Following remand, the case went to trial in January 2014 and the federal jury found in favor of King, resulting in no recovery for Thompson's estate. ■

**ColdCrib**  
#1 JAILHOUSE CATALOG  
**ISSUE#3 OUT NOW!**  
3 FREE Non-Nude PHOTOS INCLUDED!  
WITH PURCHASE  
INMATES MUST SEND \$10  
TO GET YOUR OWN MULTI-PAGE  
CATALOG/MAGAZINE TO ORDER  
HUNDREDS OF LOVELY LADIES PHOTOS  
& OTHER SERVICES FOR THE INCARCERATED

THE TRUTH ABOUT SAVING ON JAIL CALLS  
LEARN HOW TO GET FEMALE COMPANIONS ON THE OUTSIDE  
"CORRECTIONAL FACILITY FRIENDLY"

**GET MAIL FROM FEMALE PENPALS**  
GET LISTED ON OUR PENPAL SITE  
[www.COLDCRIB.com](http://www.COLDCRIB.com)  
Send your photo and info along  
with \$30 for 1 FULL year membership  
OR \$30 for Pen-Pal List of up to 50 addresses  
of our registered female PenPals

**ColdCrib communications**  
INMATES CALL CELL PHONES  
**\$17/mo Unlimited Calls**  
+ \$15 ONE TIME Activation Fee  
Federal, State, County & Local Facility Inmates  
Local Number Provided Same Day!

**NOW INMATES CAN ORDER THEIR OWN NUMBERS!**  
MAKE EVERY CALL HOME A LOCAL CALL  
NO MORE RUNNING OUT OF MINUTES!  
SEND \$3 FOR PHONE PLAN APPLICATION FORM  
OR HAVE YOUR LOVED ONES ORDER ONLINE  
[www.ColdCribCommunications.com](http://www.ColdCribCommunications.com)

**SPECIAL OFFER**  
BEST 4X6 PHOTOS  
VARIOUS BACKSHOTS & POSITIONS  
**SET OF 15 (NON-NUDE) SEXY PHOTOS**  
ONLY \$16  
MUST ADD \$2 S/H FOR ALL ORDERS  
INMATES MUST SEND FACILITY CHECK OR MONEY ORDERS  
**COLD CRIB**  
PO BOX 682407  
FRANKLIN TN 37069

**Help From Outside, For Humanity Inside.**  
Offering basic services on the outside.

FINANCE & BUSINESS  
SOCIAL NETWORKING  
PARALEGAL  
ADMINISTRATIVE  
INFORMATION  
PHONE  
CREATIVE

**HFO**  
HELP FROM OUTSIDE

Help From Outside understands what you're going through. We can help you accomplish the things you need to get done but can't.

We offer:  
- High standards & ethics  
- Timely & professional services  
- Personal touch

"HFO has excellent business etiquette and ethics."  
- T. Brown  
"I like that you sent a personal letter. HFO is more personable than your competitors."  
- A. Mitchell

**WE'VE MOVED! PLEASE CONTACT US AT OUR NEW ADDRESS:**  
For a brochure and application please send a SASE to:  
Help From Outside | 2620 Bellevue Way NE #200 | Bellevue, WA 98004  
206.486.6042 | [www.helpfromoutside.com](http://www.helpfromoutside.com)

# Ninth Circuit: Damages Required for Compelled Religious-Based Treatment

by Mark Wilson

**T**HE NINTH CIRCUIT COURT OF APPEALS has held that damages are required, as a matter of law, when a parolee is incarcerated for objecting to compelled participation in a religious-based drug treatment program.

Citing “uncommonly well-settled case law,” the Court of Appeals found in 2007 that the First Amendment is violated when the state coerces an individual to attend a religious-based substance abuse program. See: *Inouye v. Kemna*, 504 F.3d 705 (9th Cir. 2007).

The California Department of Corrections and Rehabilitation (CDCR) contracts with Westcare, a private entity, to provide drug and alcohol treatment for parolees in Northern California. Westcare, in turn, contracts with Empire Recovery Center, a non-profit facility. “Empire uses a 12-step recovery program, developed by Alcoholics Anonymous and Narcotics Anonymous, that includes references to

‘God’ and to ‘higher power.’”

Barry A. Hazle, Jr., an atheist, was incarcerated due to California drug convictions. His parole conditions required him to complete a 90-day residential drug treatment program.

Prior to his February 26, 2007 release from prison, Hazle had asked prison and Westcare officials to place him in a non-religious treatment program. Westcare officials directed Hazle to Empire.

When Hazle realized Empire was a religious-based program, he repeatedly objected to Westcare officials. They responded “that the only alternative to Empire was a treatment facility whose program had an even greater focus on religion.”

Hazle asked parole agent Mitch Crofoot for a transfer to a secular treatment program, and was ordered to remain at Empire while Crofoot looked into the issue.

Westcare claimed that it had no secular programs; Crofoot then informed Hazle that no alternative programs were available and he needed to complete the Empire program or his parole would be revoked and he would return to prison.

On April 6, 2007, Empire informed Crofoot that Hazle was being “disruptive, though in a congenial way,” and that his demeanor was “sort of passive aggressive.” Crofoot and parole supervisor Brenda

Wilding were aware of Hazle’s religious objections, but recommended revocation of his parole for refusing to participate in the treatment program. Hazle’s parole was revoked and he was returned to prison for 100 days.

Hazle then sued Westcare and several state officials, alleging they had violated his First Amendment rights by requiring his participation in a 12-step program as a condition of parole, rejecting his requests for a secular program and revoking his parole for refusing to participate in the 12-step program. He sought compensatory damages – for loss of liberty and emotional distress – as well as punitive damages and injunctive relief.

After Hazle filed suit, the CDCR issued a directive in response to *Inouye*, stating that parolees who refuse to participate in religious-based programs may not be compelled to attend such programs and must “be referred to an alternative non-religious program.”

The district court entered summary judgment against the defendant state officials, finding them liable for violating Hazle’s First Amendment rights. The court granted summary judgment to Westcare, however, holding that “Hazle had not established the necessary causal connection between Westcare’s actions and the



## Save on Prescription Eyeglasses & Shades

Send for a **FREE** Catalog  
Money Back Guarantee

**Prism Optical, Inc.**  
10954 NW 7th Ave  
Dept: LN0714  
Miami, FL 33168

Inquiries from Friends  
and Family Welcome  
1-800-637-4104  
www.prismoptical.com  
contact@prismoptical.com



Since 1959

## HOT DREAMS

GET YOUR NEW NON NUDE CAT #31 AND FREE PHOTO U MUST SEND A S.A.S.E ALONG WITH 5 STAMPS OR \$2.00 HUNDREDS TO CHOOSE IN BIKINI AND PANTIES

GET THE NON-NUDE SUPER CATALOG PACKAGE#1 THAT HAS OVER 2000 HOT BABES IN PANTIES, LINGERIE, THONGS, YOU FAVORITE TYPES OF SHOTS ONLY \$15.00 FREE S/H

TO RECEIVE A 30 PIC SET OF CAMELTOE SHOTS AND COEDS OF ALL SEXY HOT WHITE BABES SEND ONLY \$20.00 ALONG WITH 4 STAMPS! THEY ARE HOT! IN PANTIES BRA AN THONGS AN GSTRINGS

GOT STAMPS? SEND 50 STAMPS TO GET 10 NON NUDE HOT PICS. SEND \$27.00 TO GET NON NUDE CATALOGS 2-11 SEND \$15.00 TO GET CATALOGS 2-7 AND SAME PRICE IF U ONLY CATALOGS 7-11 COMES WITH THE SET CATALOG. SEND 5 STAMPS OR \$2.00 TO GET NON NUDECAT#30. SEND ONLY\$15 TO GET THE ALL NUDE BIG PACK CATALOG#1

PLEASE MAKE ALL PAYMENTS TO : **HOT DREAMS**  
P.OBOX 652 DEPT PN/ RACELAND,LA 70394

DON'T REMOVE THIS AD!!



violation of his rights.”

A trial was then held to determine damages. The district court informed the jury it had previously found “that each defendant violated plaintiff’s First Amendment Establishment Clause right by ... arresting and incarcerating plaintiff because of [his] failure to participate in the program.”

At the request of the defendants, however, the court instructed the jury to decide if they were jointly and severally liable or whether damages should be apportioned among them. In the latter case, the jury was to apportion damages.

The jury returned a damages verdict finding the defendants were not jointly and severally liable, and awarded Hazle no damages against each defendant.

Hazle moved for a new trial under FRCP 59(a), arguing that the zero damages verdict was contrary to the law and evidence. The district court denied the motion, holding that Hazle had waived his objection by failing to raise it before the jury was discharged, and that the jury’s finding that damages could be apportioned among the defendants was consistent with its finding that none of the defendants had caused Hazle’s constitutional injuries.

The Ninth Circuit reversed, holding that Hazle did not waive his objection and the district court had improperly denied his motion for a new trial.

“The jury’s verdict, which awarded

Hazle no compensatory damages at all for his loss of liberty, cannot be upheld,” the Court of Appeals concluded. “Given the indisputable fact of actual injury resulting from Hazle’s unconstitutional imprisonment, and the district judge’s finding that the state defendants were liable for that injury,” the Court held that “an award of compensatory damages was mandatory. The jury simply was not entitled to refuse to award any damages for Hazle’s undisputable – and undisputed – loss of liberty, and its verdict to the contrary must be rejected.”

The district court had also “erred in putting the question of apportionment to the jury in the first place,” the Ninth Circuit wrote. That “is a legal [issue] to be decided by the judge, not the jury.” The jury’s resolution of that issue was “simply inconsistent with the district judge’s order holding defendants liable for Hazle’s false imprisonment.”

In addition, the appellate court reversed the district court’s grant of summary judgment in favor of Westcare, finding “a genuine issue of material fact as to whether Westcare’s policy of contracting solely with religious facilities was a proximate cause of [Hazle’s] constitutional injuries.” The Ninth Circuit noted that “*Inouye* leaves little room for Westcare to argue that constitutional injuries of the sort suffered by Hazle were not a foreseeable result of its actions.”

Lastly, the Court of Appeals reversed the dismissal of Hazle’s state law claim for

injunctive relief to enjoin the CDCR from “carrying on any unlawful actions.” The Court said the facts in this case established “that, notwithstanding the state’s directive [to provide alternative nonreligious programs], the defendants do not appear to have taken any concrete steps to prevent other parolees from suffering the same constitutional violations Hazle suffered.”

The case was reversed and remanded, and remains pending on remand. See: *Hazle v. Crofoot*, 727 F.3d 983 (9th Cir. 2013). ■

## PEN PALS

Get your profile on the  
craziest, exciting Pen Pal  
Web sites for Singles,  
Fetishes, Foreign ladies,  
GLBT, Mexican, Religious,  
African American & More.

**3 WEB SITES \$24.<sup>98</sup>**

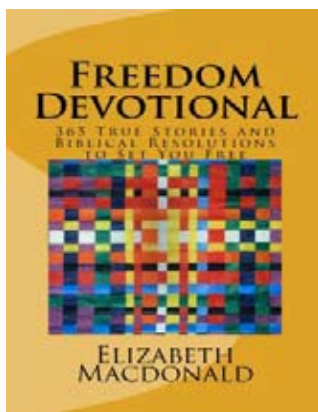
We Post your Profile  
on 3 Pen Pal Websites.  
Choose your 3 Web sites  
from our new up to date  
list of Specialty Sites.

**FREE BONUS**  
New Pen Pal Catalog

NOW Contains up-to date  
snail-mail contacts for  
Free Pen Pal Ads in the  
USA and overseas. PLUS  
complete details of the top  
20 fee based prisoner  
Pen Pal web sites in USA.  
**ORDER TODAY**

**Rated 10 by Inmate Shopper**

Get posted on 3 websites  
and our Pen Pal Catalog:  
Send \$24.98 Free Shipping  
Inmate Shopper - PEN PALS  
PO Box 4311  
Mission, TX 78574  
Corrlinks:[info@inmategifts.net](mailto:info@inmategifts.net)



**NEW!!!**

365 inspirational true stories  
written in prison for prisoners.

**Freedom Devotional**  
by Elizabeth Macdonald, PhD

Available at amazon.com and major book  
distributors. [www.macdonaldbooks.biz](http://www.macdonaldbooks.biz)



**INMATE**  
CONNECTIONS.com

92% Response Rate in 2013!  
50,000 Hits Daily!

A+ Rating with the Better Business Bureau!  
Facility and personal checks, credit cards, stamps,  
& Moneygram payments accepted!

Write for a free brochure/application:  
**CONPALS® INMATECONNECTIONS.COM® LLC**  
465 NE 181st Ave. #308 Dept. PLN  
Portland, OR 97230-6660

Email inquiries and Federal Corrlinks users:  
[info@convictpenpals.com](mailto:info@convictpenpals.com)

Since 2002

# Louisiana Public Service Commission Considers Prison Phone Issues

**T**HE *ADVOCATE* REPORTED IN MARCH 2014 that tensions were high between Louisiana Public Service Commission (PSC) Chairman Eric Skrmetta and PSC Commissioner Foster Campbell during a hearing on issues related to prison and jail phone rates.

Previously, in December 2012, the PSC voted to lower the cost of phone calls made by Louisiana prisoners by cutting the rates of some calls by 25% and prohibiting surcharges. The ban on surcharges went into effect on February 28, 2013, while the rate reduction – which only applies to calls made to family members, clergy, attorneys and certain other parties – was postponed until 2014. [See: *PLN*, April 2013, p.29; Jan. 2013, p.14; Feb. 2012, p.36].

Two prison phone service providers, City Tele-Coin and Securus Technologies (which also has the phone contract for Louisiana's state prison system), were subsequently cited by the PSC for con-

tempt for charging additional fees in spite of the prohibition on surcharges.

Commissioner Campbell had championed the prison phone reforms, including the 25% rate reduction. City Tele-Coin and Securus have since petitioned the PSC to rescind the rate cut and ban on surcharges.

Additionally, City Tele-Coin hosted a fundraiser for PSC Chairman Skrmetta's election campaign, and the company's owner, Jerry Juneau, and his wife donated \$10,000 to Skrmetta's campaign fund in December 2013.

Although the contempt citations against Securus and City Tele-Coin were pending before administrative law judges, Chairman Skrmetta asked the PSC to settle the cases.

The City Tele-Coin surcharges at issue include an "administrative cost" of up to \$10 when opening a direct-pay account; a "processing cost" on direct-pay refunds of \$5; a "transfer fee" of up to \$2.50 to move balances on direct-pay accounts to a different phone number; and a monthly "inactivity fee" of up to \$10 for accounts with no activity in a six-month period.

Securus charges a "processing fee" of \$6.95 for credit card and check-by-phone payments; a "wireless administrative fee" of up to \$2.99 a month when a user lists a wireless number authorized to receive prison phone calls; and a "processing fee" of \$4.95 on refunds from unused accounts.

On April 2, 2014, the PSC held a hearing to address issues related to the contempt citations. Commissioner Campbell had asked the PSC to hire a technical consultant to audit the books of the two prison phone companies, but the Commission rejected his request. Chairman Skrmetta sought to go into a behind-closed-doors executive session to settle the citations against Securus and City Tele-Coin, which also was rejected by the full Commission; consequently, the administrative law process will continue and the verdicts will be reviewed by the PSC. A number of prison phone justice advocates and community faith leaders testified at the hearing as to how the surcharges and high phone rates hurt prisoners' families and the local community.

Another PSC hearing, held in May 2014, was attended by Caddo Parish Sheriff Steve Prator, who criticized the Commission's actions to reduce prison and jail phone rates, saying they compromised security at his jail.

"I'm not getting in your business about what the phone rates are. That's not what I'm here to tell you. I'm just going to emphasize they've got to be monitored and we've got to have the technology, and it's expensive to do. Government has to pay for it. We have to pay for it," Prator said.

The rate reductions also have been criticized by an organization called "Crimefighters," founded by a retired New Orleans police officer, which took out a full-page ad in the *Shreveport Times* accusing Commissioner Campbell of "fighting for the rights of criminals" and "being soft on crime."

Similarly, Keith Gates, an attorney who is challenging Campbell's seat on the PSC in elections this fall, accused him of helping "jailbirds."

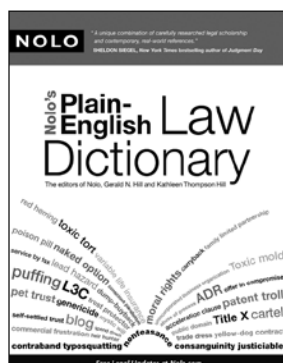
On June 6, 2014, in a monthly news column, Commissioner Campbell noted that high prison phone rates have troubled him for more than a decade. "This issue involves millions of dollars collected by monopoly telephone companies, the correctional facilities they do business with, and the families of 40,000 people in jail in Louisiana," he said.

"The Public Service Commission must assure that monopoly utility companies don't abuse their customers," Campbell added. "Inmate families have few advocates to defend them against corporations charging outrageous phone rates and questionable fees."

*PLN* will report future developments concerning prison phone rates in Louisiana. If City Tele-Coin and Securus are found guilty of the contempt citations, they face thousands of dollars in fines and the potential loss of their licenses to operate in the state. ■

Sources: *The Advocate*, [www.shreveporttimes.com](http://www.shreveporttimes.com), Commissioner Foster Campbell's monthly news column (June 6, 2014), [www.kcbd.com](http://www.kcbd.com), [www.fox8live.com](http://www.fox8live.com)

**NOLO**



**Nolo's Plain-English  
Law Dictionary**

\$29.99

Order from

**Prison Legal News**

P.O. Box 1151

Lake Worth, FL 33460

561-360-2523

Add \$6 shipping for orders under \$50

[www.prisonlegalnews.org](http://www.prisonlegalnews.org)





## State of Washington Prison Phone Justice Campaign

***Prison Phone Justice Project needs your help for statewide campaign!***

While much progress has been made in reducing the costs of long distance prison calls, we are still fighting to reduce the high costs of in-state prison and jail calls at the local level. In January 2014, the Human Rights Defense Center (HRDC), the parent organization of Prison Legal News, reopened its Seattle office to launch the Washington Prison Phone Justice Campaign.

This is our first statewide phone justice campaign, and we're excited to have people involved on both the local and national levels who are dedicated to ending the exorbitant phone rates and kickbacks associated with the prison phone industry. We have already been obtaining the phone rates and contracts from all 39 county jails in the state and the Washington DOC.

We hired a local campaign director, Carrie Wilkinson, who manages our office in Seattle and is coordinating the statewide campaign. Washington prisoners and their families pay some of the highest phone rates in the nation, and we need your help to win this battle!

Here's how you can help – first, please visit the campaign website:

**[www.wappj.org](http://www.wappj.org)**

There you can see all the ways you can make a difference. The site allows you to sign up for the campaign and upload videos and share blog entries about how high prison phone rates make it difficult for you to stay in touch with your incarcerated loved ones. You can even call in your story to **1-877-410-4863**, toll-free, at any time! We need to hear how you and your family have been affected by high prison and jail phone rates. If you don't have Internet access, you can mail us a letter describing your experiences. Send letters to HRDC's main office at: **HRDC, Attn: WA Phone Justice Campaign, P.O. Box 1151, Lake Worth, FL 33460**. Washington state prisoners can send a copy of this notice to their family members so they can get involved.

**We especially need copies of telephone bills that show prison and jail phone charges!**

By choosing to participate in the Washington Prison Phone Justice Campaign, you will be playing a key role in ending the unfair phone rates that prisoners' families have to pay. We cannot win this battle without your help, so please visit the campaign website and share your experiences! Donations are also welcome and greatly appreciated, and can be mailed to the above address or made online via the campaign website. Thank you for your support!

## Two Murders in Seven Months at CCA-run Prison in Tennessee

ON MAY 23, 2014, THE MEDICAL Examiner's Office in Nashville completed an autopsy report on Tennessee state prisoner Jeffery Sills, 43, who was murdered at the South Central Correctional Facility in Clifton, Wayne County on March 28. The facility is operated by Corrections Corporation of America (CCA), the nation's largest for-profit prison company.

Sills' death was classified as a homicide caused by "blunt and sharp force injuries." He was allegedly beaten and stabbed to death by his cellmate, Travis Bess, who was later transferred to the Riverbend Maximum Security Institution.

Jeffery Sills was at least the second prisoner murdered at the CCA-run prison since September 1, 2013, when Gerald Ewing, 28, was killed during a series of fights at the facility. Comparably, according to the Tennessee Department of Correction there were no homicides at state-run prisons in calendar year 2013 and to date this year.

Jeffery Sills' death was particularly brutal, according to the autopsy report. He suffered lacerations, abrasions and contusions to his head and neck, fractured cheek and nasal bones, cutting and stab/puncture wounds, and hemorrhages in the "posterior cervical spinal muscles" and "skeletal muscle of back and intercostal muscles of posterior thorax."

*Prison Legal News* managing editor Alex Friedmann, who also serves as associate director of PLN's parent organization, the Human Rights Defense Center (HRDC), said both prisoners and a CCA staff member employed at South Central contacted HRDC after Sills was murdered.

"Several prisoners said Bess had publicly stated he would kill Jeffrey Sills if they were placed in a cell together, and that CCA guards were present when he made that statement. Regardless, they were both put in the same cell with predictable results." Additionally, "the CCA employee who contacted us reported that Sills had asked to be placed in protective custody, but prison staff failed to act on his request before he was murdered," said Friedmann, who served six years at South Central himself prior to his release in 1999.

The Tennessee Bureau of Investigation is investigating Sills' death and has reportedly indicated that an indictment will issue soon.

"Two murders within seven months is extremely disturbing," Friedmann stated, "especially considering that CCA houses about 5,000 [Tennessee] state prisoners in three facilities while around 15,000 prisoners are held in 11 state-run facilities. Yet despite holding one-third as many prisoners, none of whom are classified maximum-security, two murders occurred at a CCA facility and zero in state prisons within the same time period."

According to research conducted by HRDC, historically there have been higher rates of violence at the three CCA-operated facilities in Tennessee than in state prisons. Based on the most recent data provided by the Department of Correction, during the first five months of 2013 the average rate of violent incidents at the CCA-run prisons – including prisoner-on-prisoner assaults, prisoner-on-staff assaults and institutional disturbances – was 24.6% higher than at state facilities.

"Other studies have also found higher levels of violence at privately-managed pris-

ons," said Friedmann. "This is presumably due to the business model of the private prison industry, which must cut costs in order to generate profit. Those cuts, particularly in regard to staffing costs, lead to high staff turnover rates, understaffing and thus less security at private prisons. Consequently there are higher rates of violence – up to and including murder, evidently."

The FBI is currently investigating fraudulent staffing reports at a CCA prison in Idaho. [See: *PLN*, Oct. 15, 2013, p.28; May 2013, p.22].

There have been two other recent homicides at CCA-operated prisons in other states, including the November 2013 murder of Michael Patrick McNaughton, 55, who was beaten to death at a CCA facility in Florence, Arizona, and the March 2014 murder of California prisoner Todd Bush, 33, at the CCA-run North Fork Correctional Facility in Oklahoma. ■

Source: *HRDC press release (June 12, 2014)*

## Visitors Fingerprinted at Alabama Prisons

ALABAMA'S PRISON SYSTEM IS THE FIRST – and currently only – in the nation to require visitors to be fingerprinted. In late 2012, the Alabama Department of Corrections (ADOC) implemented the new policy due to what officials claimed was a need for greater efficiency. A new computer system had the capacity to scan fingerprints, something the old system was not able to do. The fingerprinting procedure was "part of the upgrade" and the brainchild of the ADOC's IT department, according to prison system spokesman Brian Corbett.

The old system required guards to review each visitor's driver's license to verify their identity before allowing them into a state prison.

"That was a time-consuming task," Corbett told the *Montgomery Advertiser*. "Now, the verification process is much faster, so visitors are moved through the process much faster."

"We still require visitors to have a government-issued photo ID, and that re-

quirement will remain in place," he added. "But there are times when someone else resembles the photo on an ID. Scanning the fingerprint of visitors verifies they are who they say they are."

The program prompted an immediate response from the American Civil Liberties Union. David Fathi, director of the ACLU's National Prison Project, didn't buy the ADOC's purported security concerns.

"Alabama prison officials can't say with a straight face that it is a security issue, not when the remaining 49 state prison systems do not require the scanning of visitors' fingerprints," he stated. "It is an unnecessary barrier to visiting inmates."

Fathi called the fingerprint scan "extreme" – especially since visitors to Alabama state prisons already have to undergo a criminal background check.

"If showing a driver's license is all that is required to get on an airplane that will fly you near the White House," he said, "it should be enough to get you inside a prison

ADOC officials claimed that visitors' fingerprints will not be shared with local, state or other law enforcement agencies, nor will they be used to check for outstanding warrants. Alabama is the first state to require visitor fingerprinting at all state prisons, but other correctional facilities have considered similar policies.

In the nation's capital, officials with the District of Columbia Department of Corrections (DC DOC) announced in early 2011 that they were considering fingerprinting visitors at the D.C. jail to check for outstanding warrants.


The proposal prompted concerns that the fingerprinting would be overly intrusive,

even though DC DOC officials said they never intended to digitally store the fingerprints and the Metropolitan police would decide what to do if a visitor's fingerprints revealed an outstanding warrant.

Corrections officials told the *Washington Examiner* that they wanted to use “live scan” technology to take an image of the visitors’ fingerprints – the same technology used on prisoners to confirm their identity when they enter and leave the jail. The District planned to use federal grant money to pay for the system.

“Through a \$134,000 grant from the Office of Justice Grants, we will be [using] the technology in our visitors control area to assist [D.C. police] in the identification of individuals with outstanding warrants,” corrections spokeswoman Sylvia Lane told the *Examiner*. “If a match is made, DOC will detain the visitor and contact the police department and the visitor will be taken into custody,” she said.

The DC DOC's plan to fingerprint visitors faced sharp criticism, however, and officials announced in March 2011 that they were reevaluating the proposal due to a "host of legal, financial and operational concerns that have been raised."

In Maryland, a public protest accompanied the March 2013 implementation of a policy requiring all visitors to the Baltimore City Detention Center to be fingerprinted. The warden at the jail said if the fingerprinting reveals that a visitor has been incarcerated, then he or she will not be allowed to visit. 

Sources: *USA Today*, [www.correctionsone.com](http://www.correctionsone.com), [www.allgov.com](http://www.allgov.com), *Associated Press*, <http://cjonline.com>, [www.nbcwashington.com](http://www.nbcwashington.com), [www.wbaltv.com](http://www.wbaltv.com), *Montgomery Advertiser*

\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$  
 \$ **FREE Pen-Pal Success Catalog** \$  
 \$     for more info send SASE to:       \$  
 \$ Superior Enterprises, Dept. JK       \$  
 \$     1247 Pondview Ave.               \$  
 \$ Akron, OH 44305-3340               \$  
 \$ **Millionaire Prisoner Newsletter** \$  
 \$     for sample copy send              \$  
 \$     \$3 or 7 <sup>F</sup>/<sub>C</sub> "Forever" Stamps       \$  
 \$     to address above!                \$  
 \$     (Sorry - No IL Prisoners)        \$  
 \$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$



 **JailCallsUSA**

**\$9<sup>.95</sup>** per month

**\*UNLIMITED JAIL CALLS\***

**"WE BEAT ALL OUR COMPETITORS"**

**SWITCH TO US TODAY!!**

- No Contracts
- No Credit Checks
- No Equipment to buy

**LOWER THE CALL RATES FOR:**

- GLOBAL TEL LINK
- SECURUS
- V-CONNECT
- PAYTEL
- ICSOLUTIONS
- VAC
- PLUS MORE

**FEDERAL \* STATE \* COUNTY**

**SAME DAY ACTIVATION - NO PER MINUTE CHARGES ON OUR END. JUST \$9.95 A MONTH!**

**GET A LOCAL NUMBER TODAY**  
**888-776-2012**

**www.JailCallsUSA.com**

Online Payments Accepted    



**ORDER THE NEW PRISON OFFICIAL CATALOG - ONLY \$10**

**PRISON OFFICIAL**  
www.PRISONOFFICIAL.com

**INMATES #1 RECOMMENDED**

**ISSUE #1 OR ISSUE #2**  
5 FREE HOT MODEL PHOTOS INCLUDED WITH PURCHASE!

**CORRECTIONAL FACILITY APPROVED**

**GET MAIL**  **DONT DELAY**

**ORDER THE NEW PEN PAL LIST OF 50 REAL ADDRESSES TO FEMALES WAITING TO CORRESPOND TO PRISONERS**

**RECENT PHOTOS INCLUDED!**

**SEND \$49.95**



Inmates post your profile on our Pen Pal website  
**www.PrisonOfficial.com**  
2 year membership - Send \$30  
250 word limit send S.A.S.E for return of your photo

**Send Facility Checks/Money Orders To:**

**PRISON OFFICIAL**  
**P.O. BOX 1427**  
**WARRENVILLE IL 60555**

**MUST ADD \$2 S/H TO ALL ORDERS**

# Prison Industries in India Compete in Open Market

**T**HE GOVERNMENT OF THE INDIAN STATE of Tamil Nadu is expanding a program that allows prison industries to compete in the open marketplace under the ironic brand name "Freedom." Prison industry programs already exist at nine central prisons, three women's prisons and nine district jails scattered across Tamil Nadu, located in the southern tip of the Asian nation. The facilities hold a combined total of about 11,000 prisoners.

Prison authorities are adding open-air bazaars to market fresh produce grown by prisoners to shoppers from neighboring communities. The bazaars are in addition to current prison industries that include the production of soap, leather, textiles, books and baked goods. Traditionally, those products have been sold only to other government agencies and are considered substandard.

"So far, we were manufacturing goods for the police and other departments. Such government clients are not very demanding in terms of pricing, delivery schedule and quality, although we ourselves try to maintain this," said S.K. Dogra, Additional Director-General of Police in Tamil Nadu. "But once you operate in the open market, you have to adopt the best commercial practices. So, naturally the entire process of manufacturing will have to move up the scale in terms of efficiency and quality."

Providing prisoners with skills they can

use to obtain jobs after their release is a major objective of the program. Prison officials said they have identified individuals who are qualified to provide training to prisoners in the use of modern manufacturing technology. Additionally, a portion of the revenue generated by the sale of prison-made goods on the open market is earmarked for prisoners' accounts.

The expansion of the "Freedom" label includes a jail in Ondipudur, in the western part of the state, where prisoners have taken to farming. Under the watchful eye of guards, they sell their produce in a newly-created bazaar on the facility grounds.

P. Govindarajan, Deputy Inspector General of Prisons in nearby Coimbatore, said the bazaar is an effort to both rehabilitate and re-socialize prisoners. One of the prisoners at the facility said the program has allowed him to pursue his goal of becoming a farmer. "Life took me elsewhere, but I am finally living my childhood dream," said "Madhu," a prisoner whose real name was not disclosed, in February 2014.

Another prisoner said the program gave him a sense of fulfillment. "It was a very proud moment to see something I'd planted give fruit," he said, holding an ear of corn he had grown.

Prison officials said the profits from the bazaar are shared among prisoners, prison staff and the Tamil Nadu government, with each receiving 20% of the net proceeds. The remaining 40% is placed in a state prison fund.

On February 23, 2014, Chief Minister J. Jayalalithaa inaugurated a "Freedom

Shop" in the Puzhal prison complex in eastern India, to serve as a market for prisoner-produced goods; the shop includes a bakery, a waiting hall for visitors and other facilities.


A press release said the Chief Minister directed that "Freedom Shops" be opened in all central Indian prisons to market goods made by prisoners. The initiative is part of the state's effort to reform prisoners and provide them with training to help them live a decent life after they complete their sentences.

Products for sale include garments, bakery items, footwear, soaps, candles, mosquito nets, rain coats and more, all manufactured by prisoners. In addition, the program is providing agricultural training to prisoners at two other facilities in Singanailur and Salem.

"I do not see any difficulty in marketing the products," said Dogra. "Many of the prison inmates are highly skilled. Since they do not have any diversions within the prison, they usually work with greater focus."

Taken from a different perspective, however, Dogra's comments could portend abuse of the system. Because prisoners "do not have any diversions," which makes them good workers, prison authorities may have an incentive to prevent the introduction of any "diversions"—such as educational, treatment or other rehabilitative programs—to ensure that prisoners focus on their profit-generating prison industry jobs. ■

Sources: [www.thehindu.com](http://www.thehindu.com), <http://m.newindianexpress.com>



**PASS**

Prisoner Assistance Scholastic Service provides educational materials nationally to prisoners in state and federal prisons and jails.

- ◆ Victim Awareness
- ◆ Anger Management
- ◆ Addiction/Substance Abuse
- ◆ Domestic Violence
- ◆ Gang Diversion
- ◆ Conflict Resolution
- ◆ Parenting
- ◆ Non-violent Communication
- ◆ Re-entry in Society
- ◆ Living With Purpose

Prisoners who successfully complete the PASS program earn a degree in Personal Psychological Development which can be used as evidence of rehabilitation before parole boards and with prison officials.

**10 COURSES**  
**2 SEMESTERS**

Graded study - completed through the mail.

**1-888-670-7277**

PASS Program, PO BOX 2009, San Francisco, CA, 94126

\$500 for the entire course of study and degree.

**FOR MORE INFO**

[www.passprogram.org](http://www.passprogram.org)  
[pass@passprogram.org](mailto:pass@passprogram.org)

## Jury's Tasteless Gag Gifts to Judge and Bailiff Fail to Demonstrate Unfair Trial

**T**HE ELEVENTH CIRCUIT COURT OF APPEALS has affirmed the denial of a death row prisoner's habeas corpus petition that contended he was denied a fair trial by an impartial judge and jury because the jurors gave inappropriate gag gifts to the judge and one of the bailiffs.

The habeas proceeding involved Georgia death row prisoner Marcus A. Wellons, who was convicted of the murder and rape of a fourteen-year-old girl in 1989. During his trial, Wellons did not dispute that he had killed and raped the victim; rather, he

claimed he was either not guilty by reason of insanity or guilty but mentally ill. After finding him guilty, the jury recommended a sentence of death for the murder and life for the rape.

Defense counsel learned during post-trial interviews that some jurors gave gag gifts to the judge and a bailiff either near the end of or immediately following the penalty phase of the trial. The judge received chocolate candy in the shape of a penis while the bailiff received chocolate in the shape of female breasts. Wellons' counsel



also learned that when the sequestered jurors dined at a local restaurant, the judge had spoken to them.

Motions for a new trial and for recusal of the judge were denied, Wellons' convictions were affirmed on appeal and the Supreme Court denied review. Likewise, a state habeas petition was denied. After the federal district court denied Wellons' habeas petition, the Eleventh Circuit affirmed. This time, however, the Supreme Court granted certiorari and the matter was subsequently remanded for an evidentiary hearing on the "disturbing facts of this case." The district court again denied relief and Wellons again appealed.

As for the encounter at the restaurant, most of the jurors testified that the judge had waved or nodded or made a brief comment. One juror recalled the encounter occurred on the day the jury saw the autopsy photos, and the judge commented that she understood the jurors were upset.

Four of the jurors said they did not become aware of the gag gift to the judge until later. As it turned out, a friend of one of the jurors owned a confectionery shop, and the juror asked her husband to ask the friend to make chocolate turtles for the jury. The friend, who was unaware of the serious nature of the case, included the gag gifts to "lighten things up." On the last day of the trial, the gifts were given to the judge and bailiff.

The Eleventh Circuit cited precedent holding that an ex parte communication alone is insufficient to overturn a conviction. Additionally, the record did not indicate the trial judge had showed partiality during the brief encounter with the jurors at the restaurant, so habeas relief on that issue was properly denied.

Further, the Court of Appeals found the gag gifts did not call into question the impartiality of the jury. It held the "unfortunate giving of these tasteless gifts" was "inconsequential to the verdict" and played

no role in the judge's or jury's consideration of the case. The jurors testified that the gifts, which were given at the conclusion of the case, had nothing to do with anything that occurred during the trial.

The appellate court noted judges or bailiffs should not receive gifts from the jury. "Trial judges are expected to handle these situations, sternly admonish or discipline those involved, and disclose such occurrences to each party so that timely objections can be considered and made," wrote the Eleventh Circuit. While the judge had failed to do so in this case, the Court of Appeals found the jurors' testimony did not indicate Wellons had received an unfair trial.

"We also acknowledge that the ill-advised actions of a few thoughtless jurors could create the perception that this jury was too busy joking around rather than deciding Wellons's fate," the appellate court stated. "But these were two isolated incidents in the span of a multi-week trial and we cannot say, on the basis of this record, that the verdicts were tainted."

Accordingly, the district court's denial of Wellons' habeas petition was affirmed.

A petition for writ of certiorari, filed with the U.S. Supreme Court, was denied on October 7, 2013. Wellons remains on Georgia's death row. See: *Wellons v. Warden, Georgia Diagnostic and Classification Prison*, 695 F.3d 1202 (11th Cir. 2012), *cert. denied*. ■

### Actual Innocence

Explains how the innocent are convicted by faulty eyewitness testimonies, police perjury, expert witnesses, prosecutorial misconduct, etc., and how DNA testing is used to free the innocent.

\$17.00 from PLN's Book Store!  
See page 61 for more information.

## WHEN IT IS YOUR FAMILY'S FUTURE, EXPERIENCE MATTERS

### STATE AND FEDERAL POST-CONVICTION AND APPEALS

Licensed since 1995, hundreds of appellate briefs and habeas petitions, capital qualified for habeas and appeals in Texas and U.S. Southern District of Texas, Motions for New Trial, Rule 35 and 60b motions, re-sentencing and arrest of judgment.

Call or write the Law Offices of Patrick F. McCann, 713-223-3805.  
909 Texas Ave, Ste 205, Houston, Texas 77002 • writlawyer@justice.com  
**Serious financial inquiries only.**

# LEARN TO PROTECT YOUR RIGHTS

### YOU HAVE A RIGHT TO

- Adequate medical care
- Protection from assault
- Humane living conditions
- Safety from officer abuse

Learn how to defend your basic human rights with the comprehensive litigation guide, **Protecting Your Health and Safety**, 2nd edition, written specifically for prisoners who are unable to receive help from a lawyer.

Written by Robert E. Toone  
Edited by Dan Manville  
*A Project of the Southern Poverty Law Center\**

**COST** \$16 total  
(\$10 + \$6 shipping/handling)  
FREE shipping/handling for orders from Prison Legal News over \$50

### ORDER A COPY

Send a check  
or money order to:  
**Prison Legal News**  
**PO Box 1151**  
**Lake Worth, FL 33460**  
**561-360-2523**

*Be sure to include your name, identification number (if any), and mailing address. We also accept VISA and Mastercard. If using a credit card, please include the type of card (VISA or Mastercard), card number, and expiration date.*

This book does not deal with legal defense against criminal charges or challenges to convictions that are on appeal. Edition last revised in 2009.

\*Please do not send orders to the Southern Poverty Law Center.

# Decline in Arrests of Los Angeles County Probation Officers

**T**HE LOS ANGELES COUNTY PROBATION Office has cited tougher self-policing and stricter hiring standards for a dramatic decrease in the number of employees arrested for driving under the influence and various other crimes, but the union representing probation officers complained the changes have led to understaffing.

Probation Office Chief Jerry Powers said the number of probation employees arrested for crimes both on and off the job fell from a high of 74 in 2011 to just 32 in 2013. Nearly half the arrests last year – 15 – were for DUI offenses. Most of the remaining charges were theft and assault.

“We’ve come light years from where we were to where we are today,” Powers said at a news conference.

But the president of AFSCME Local 685, the union representing the county’s probation officers, disputed Powers’ claim that the drop in the number of arrests was the result of hiring standards and self-policing.

“It’s like crime statistics, they go up and down all the time,” union president Ralph Miller said. “Taking credit for those numbers going down is like taking credit for the sun rising and setting.”

Powers said stricter hiring standards, including polygraph tests and more extensive background checks of job applicants, were responsible for the decline. The Probation Office has also become more aggressive with internal investigations.

“The amount of discipline has almost tripled, so we’re holding employees accountable,” Powers stated. “I think that sends a message to all employees in the department that you’re going to behave, on duty and off duty, and if you fail to meet our standards, we’re prepared to see that you correct your behavior or you find another employer.”

The Los Angeles County Board of Supervisors heaped praise on the Probation Office in late 2013 for implementing the new standards, but the union said the changes jeopardized public safety. By January 2014, the union noted, more than 1,000 of the Probation Office’s 6,600 job positions remained vacant, while probation officers were required to monitor some 80,000 adult and juvenile offenders – a number that has increased under California’s Realignment

initiative. [See: *PLN*, June 2014, p.1].

AFSCME Local 685 complained that the new hiring standards are not realistic, and in a letter to the Board of Supervisors accused Powers of having “seriously mismanaged the hiring and promotional process, resulting in a grave public safety crisis.”

Arrests of probation officers fell from 74 in 2011 to 44 in 2012, but included some high-profile cases, including one high-ranking employee who was charged with defrauding banks by falsely claiming his identity had been stolen.

On September 17, 2012, FBI agents arrested Carl Edward Washington, a division chief of intergovernmental relations. In announcing the arrest, the FBI said Washington faced “three counts of bank fraud and three counts of making a false statement to a federally insured financial institution.”

Washington is also an ordained minister and a former lawmaker who was elected three times to the state Assembly. As a Probation Office employee, he reportedly received loans and credit cards to purchase airline tickets and hotel rooms and to obtain cash advances totaling “several thousand dollars,” according to investigators.

Washington eventually stopped paying his debts and claimed to be a victim of identity theft. On July 22, 2013, he was sentenced to one day in federal prison with credit for one day already served, plus three years of supervised release and \$193,898.25 in restitution.

Of the 44 Los Angeles County probation officers arrested in 2012, dozens were charged with drunk driving, drug possession and theft. Charges were also filed against a six-year veteran employee for filing false workers’ compensation claims, and against a probation officer for allegedly shooting a man in a bar.

“They shouldn’t have 40 arrests in any department,” said Connie Rice, a civil rights attorney and police watchdog who has been critical of the Probation Office. “If you have 40 arrests, that ought to be a sign that something is very wrong. It’s like, ‘Houston, we have a problem.’”

The number of probation employees charged with crimes fell again to 32 in 2013.

“We don’t want any arrests, but reducing the numbers by half in two years shows our new policies are having an impact,” said Assistant Chief Probation Officer Don Meyer. “If we could reduce it to zero – which is unrealistic – that would be nice, but we’ve obviously done a good job. It’s not by accident that those numbers have gone down.”

Still, some high-profile arrests have continued. In August 2013, probation officer Frank Elliott Boyd III, 48, pleaded not guilty to charges arising from a scheme to defraud the state of \$1.6 million in phony childcare payments.

According to prosecutors, Boyd, his ex-girlfriend and four other co-defendants allegedly set up a number of licensed home-based childcare centers, then urged parents to file fake documents with county and state agencies for childcare that was never provided. Boyd was charged with conspiracy, grand theft and perjury.

Also in 2013, a former probation officer was arrested on misdemeanor charges of using his iPad to take photos up a woman’s skirt. Julio Mario Medal was sentenced to five years’ probation and ordered to perform 120 days of community service after pleading guilty to secretly videotaping for sexual gratification, unlawful loitering and attempted videotaping for sexual gratification.

Arrests have continued into 2014. For example, former Los Angeles County probation officer Robyn Palmer, 29, was arrested on felony charges of insurance fraud, forgery, grand theft and wire fraud on May 16, 2014. She had received over \$29,000 in workers’ comp payments for an injury allegedly received while restraining a juvenile offender. However, it was later learned she was not at work on the day she claimed the injury occurred. Palmer was jailed on \$100,000 bond.

Meyer noted that most of the Probation Office employees who have been arrested were hired in 2005-2008, when the office did not conduct background checks on job applicants. ■

Sources: *Los Angeles Times*, [www.scp.org](http://www.scp.org), <http://losangeles.cbslocal.com>, [www.examiner.com](http://www.examiner.com), [www.dailynews.com](http://www.dailynews.com)

# States Renewing Their Prison Phone Contracts

*As state DOCs renew or rebid their prison phone contracts, you can help urge them to lower intrastate phone rates and eliminate commission kickbacks!*

*The Campaign for Prison Phone Justice needs your help in:*

**\*\*\*\* Utah, Arkansas and Nevada \*\*\*\***

The Departments of Corrections in the above states are in the process of re-bidding or renewing their prison phone contracts. Most DOCs receive a commission (kickback) on revenue generated from calls made by prisoners, which results in excessively high phone rates. Although the FCC voted last year to cap the costs of interstate (long distance) prison calls, which went into effect on February 11, 2014, the order does not apply to intrastate (in-state) calls. An estimated 85% of prison phone calls are in-state. This is an opportunity to ask DOCs to forgo commissions and ensure their new prison phone contracts are based on the lowest cost to those who pay for the calls – mostly prisoners' families.

## **Take Action NOW! Here's What YOU Can Do!**

Ask your family members and friends to write, email, call and fax the DOC and the governor's office (addresses and contacts are listed below), requesting that the DOC: 1) forgo commission payments when re-bidding or renewing its prison phone contract, and 2) base the new contract on the lowest calling costs. Lower prison phone rates should apply not just to long distance calls but also to in-state calls. For a sample letter or to easily send an email, visit the Campaign for Prison Phone Justice's website and click on the "Take Action" tab:

**[www.phonejustice.org](http://www.phonejustice.org)**

### **Prison phone contract information & Contacts:**

**Utah:** Receives a 55% kickback; existing contract expires on 7-31-2014. Charges \$4.60 for a 15-minute collect intrastate call and \$3.15 for a collect local call. **Contacts:** Utah DOC, Director Rollin Cook, 14717 South Minuteman Drive, Draper, UT 84020; ph: 801-545-5513, fax: 801-545-5726, email: musher@utah.gov. Governor Gary R. Herbert, State Capitol, Suite 200, Salt Lake City, UT 84114; ph: 801-538-1000 or 800-705-2464, fax: 801-538-1557, email: sdeakin@utah.gov

**Arkansas:** Receives a 45% kickback; existing contract expires on 8-15-2014. Charges \$4.80 for a 15-minute collect intrastate and local call. **Contacts:** Arkansas DOC, Director Ray Hobbs, Arkansas Department of Correction, P.O. Box 8707, Pine Bluff, AR 71611-8707; ph: 870-267-6200, fax: 870-267-6244, email: ray.hobbs@arkansas.gov. Governor Mike Beebe, State Capitol, Room 250, Little Rock, AR 72201; ph: 501-682-2345, fax: 501-682-1382, email: tonya.mercer@governor.arkansas.gov

**Nevada:** Receives a 54.2% kickback; existing contract expires on 8-28-2014. Charges \$2.95 for a 15-minute collect intrastate and local call. **Contacts:** Nevada DOC, Director James Cox, 3955 West Russell Road, Las Vegas, NV 89118; ph: 702-486-9910, fax: 702-486-9961, email: gcox@doc.nv.gov. Governor Brian Sandoval, State Capitol Building, 101 North Carson Street, Carson City, NV 89701; ph: 775-684-5670, fax: 775-684-5683, email: scheduling@gov.nv.gov

# Kentucky Prisoner's Due Process Rights Violated in Disciplinary Hearing

by Robert Warlick

ON AUGUST 29, 2013, THE KENTUCKY Supreme Court affirmed an appellate decision that found an Adjustment Committee (AC) in a prison disciplinary proceeding had violated a prisoner's due process rights by not meeting the "some evidence" standard as applied to confidential informants (CIs).

Ontario Thomas, imprisoned at the Northpoint Training Center in Kentucky, was found guilty by the AC in June 2009 of assaulting another prisoner, based solely on statements from at least two CIs.

On December 16, 2009, Thomas filed a petition in the Lyon Circuit Court alleging that the AC's reliance on the CI information violated his due process rights. However, before the court ruled on his petition, two AC reviews were conducted which determined that the CI statements were reliable, reaffirming the guilty finding. The AC stated it had "review[ed] the confidential information and believe it to be true and reliable according to policy." The Circuit Court subsequently dismissed Thomas' petition, finding that his rights had not been violated.

The Court of Appeals reversed due to the AC's failure to meet the "some evidence" standard during Thomas' disciplinary hearing. The appellate court relied primarily on *Hesley v. Wilson*, 850 F.2d 269 (6<sup>th</sup> Cir. 1988), which requires a court to assess the reliability of a CI and the CI's information to determine whether it qualifies as "some evidence." The record on appeal provided no details as to the credibility of the CIs; consequently, the Court of Appeals held that Thomas' due process rights were violated and remanded the case for a new AC hearing.

The state appealed and the Kentucky Supreme Court affirmed. Citing supporting federal cases from the Third, Seventh, Eighth and Ninth Circuits, the Court noted that the record "simply begs for some corroborating factors" of the CIs' reliability, which could be done by stating for the record, "without divulging identities, why witnesses are reliable."

The state Supreme Court concluded that "there is plainly no evidence to support the Adjustment Committee's determination

that the informants' information was reliable. We know nothing of these informants and their information – whether they were eyewitnesses or whether there was any corroborating evidence. It would be helpful if the investigating officer, after being duly sworn, gave written details of what was related. This would not only bolster the observation of the witnesses, but would also provide the inmate charged with a better opportunity to rebut the evidence against him." See: *Haney v. Thomas*, 406 S.W.3d 823 (Ky. 2013). ■

## Brady Violations Result in Habeas Relief for Pennsylvania Death Row Prisoner

by David Reutter

TO CORRECT A "GRAVE MISCARRIAGE of justice," Pennsylvania U.S. District Court Judge Anita Brody granted a writ of habeas corpus to a state prisoner and vacated his conviction and death sentence for a murder that "in all probability he did not commit." The court found violations under *Brady v. Maryland*, 373 U.S. 83 (1963) due to the state's withholding of evidence.

James A. Dennis was convicted in Philadelphia for the October 22, 1991 killing of high school student Chedell Williams. Williams, 17, and a friend, Zahra Howard, were approached by two men who demanded they give up their earrings. The girls fled; Howard hid behind a fruit stand while Williams ran into the street.

The men chased Williams. One of them held a gun to her neck and shot her; they then jumped into a car and sped away.

Williams was pronounced dead shortly after her arrival at a hospital.

Dennis' conviction was "based on scant evidence at best," the district court wrote in an August 21, 2013 ruling. "It was based solely on shaky eyewitness identifications from three witnesses, the testimony of another man who said he saw Dennis with a gun the night of the murder, and a description of clothing seized from the house of Dennis' father that the police subsequently lost before police photographed or catalogued it."

The police never recovered a weapon, never found the car used by the assailants and never found two accomplices described by witnesses. Judge Brody said confidence in Dennis' conviction was significantly diminished by flaws with the investigation and prosecution of the case, and noted "There was virtually no physical evidence presented at trial."

All five of the nine witnesses who provided estimates of the shooter's height put him at 5'7" to 5'10", with four describing him as 5'9" or 5'10". Dennis, however, is only 5'5". None of the witnesses confidently identified Dennis right away, but three ultimately became the only testifying witnesses for the state. The other witnesses did not testify – a fact the district court found to be a troubling flaw in trial counsel's investigation and trial preparation.

**inmateMAGS** com  
formerly MyMagstore.com

Buy 1200 **SINGLE** Copies of Magazines • 1200 **Subscriptions** • **VIP Service**  
1800 **Newspapers** • Payment with **Stamps** • **Prepaid Accounts**  
Send \$3 or 10 Stamps for **50+ Page Full Catalog** (\$3 Discount Coupon Included)

**InmateMAGS.com**  
4208 University Way NE  
Seattle, WA 98105

**www.inmateMAGS.com**  
Info@inmateMAGS.com  
206-322-6397



Of the witnesses not called to testify, four did not identify Dennis as the shooter, three did not pick him from a photo array and another chose a different suspect from a line-up. A witness who had looked the shooter in the eye definitively said Dennis was not the shooter, but the state never informed defense counsel of that fact.

Upon considering Dennis' habeas petition, the federal district court found several *Brady* violations. First, it found violations in the suppression of six documents. The state did not dispute that it failed to disclose the documents to Dennis until a decade after his trial.

One of those documents was a statement from a jail prisoner who had corroborated evidence in the case and pointed to two other suspects. Another involved a witness who saw Dennis on the day of the murder; she gave police an original receipt from the Department of Public Welfare that would have corroborated Dennis' alibi that she had seen him on a bus at the time of the murder.

The prosecution also suppressed statements from Zahra Howard's aunt and uncle, who said she had recognized the

shooter from her high school and two people she knew were present during the shooting.

As for the witness who said he had seen Dennis with a gun on the day Williams was killed, he only made that statement after being arrested "for a violent assault of his pregnant girlfriend that left her in the hospital," and six months later prosecutors dropped the felony assault charges against him "without explanation."

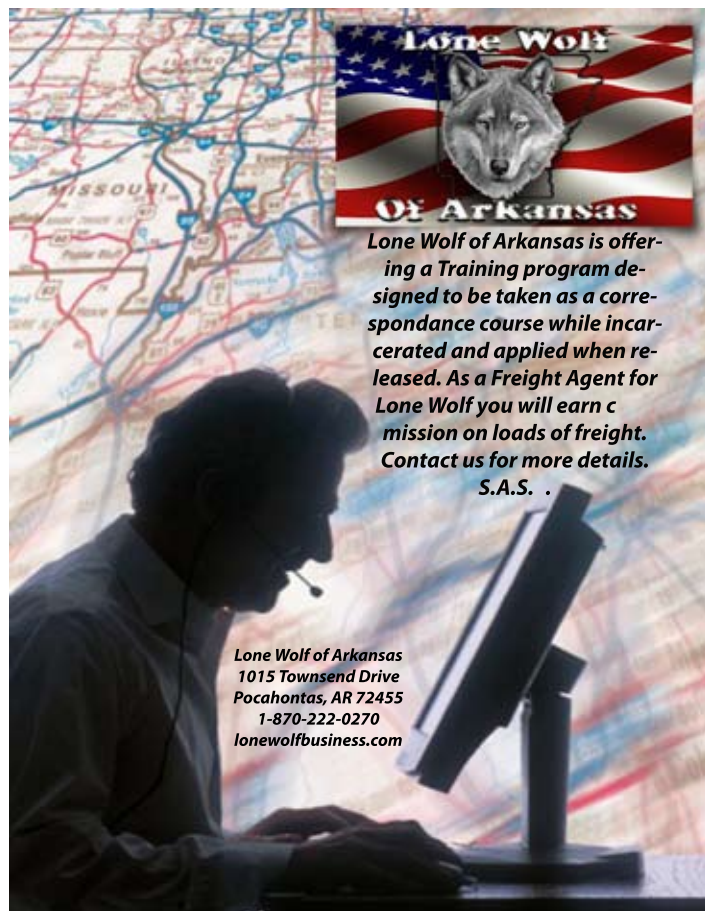
The district court found that Dennis was prejudiced under *Brady* by the prosecution's withholding of documents related to the two witness statements and the receipt that would have corroborated his alibi. It also held the cumulative effect of the *Brady* violations provided a basis for granting habeas relief.

"[T]here can be no question" that the state had violated Dennis' right to due process by withholding exculpatory evidence that would have made a material

difference at his trial, Judge Brody wrote. "As a result, after serving over 20 years in prison, Dennis is entitled to receive either a new trial or his freedom."

As of July 2014, however, he has received neither. The state appealed the district court's judgment, which has been stayed pending a decision by the Third Circuit. Meanwhile, Dennis remains on Pennsylvania's death row. He is represented pro bono by the law firm of Arnold & Porter, LLP. See: *Dennis v. Wetzel*, 966 F.Supp.2d 489 (E.D. Pa. 2013). ■

Additional sources: [www.jimmydennis.org](http://www.jimmydennis.org), [www.metro.us](http://www.metro.us), [www.dailymail.co.uk](http://www.dailymail.co.uk), [www.arnoldporter.com](http://www.arnoldporter.com)



**Lone Wolf of Arkansas**  
**OF Arkansas**

**Lone Wolf of Arkansas is offering a Training program designed to be taken as a correspondence course while incarcerated and applied when released. As a Freight Agent for Lone Wolf you will earn a commission on loads of freight. Contact us for more details. S.A.S. .**

**Lone Wolf of Arkansas**  
 1015 Townsend Drive  
 Pocahtontas, AR 72455  
 1-870-222-0270  
[lonewolfbusiness.com](http://lonewolfbusiness.com)



**PRISONER ASSISTANT**  
 REHABILITATION AND REENTRY PLANNING

**Join Our Exclusive Membership, Open a Bank Account and Gain Access to Our Services!**  
 We provide full services to our membership clients. **MEMBERS ONLY**

**A Bank Account under your social security number is the only way to build a positive banking history.**  
 Deposits, Statements, Money Orders, Bank Checks, Stamp Exchange, Wire Transfers, Direct Deposit & PayPal.

**Prisoner Concierge**  
 Internet Purchases, Gift Cards, Current Events, People Search, Personal Shopper and more. "If It Can Be Done, We Will Try To Do It" Order our catalog for more details.

**GRAPHIC**  
 We can do any Graphic Design project. Printed Material, Musical Emails, Creative Writing, Photo Reproduction & Forwarding, Book Publishing, Book Cover Design, Press Releases, Portfolio Creation, and Website Design.

**Virtual Office**  
 Mailboxes, Emails, Texts, Scanning, Copies, Typing, Storage, Document Preparation, Internet Research, Prepaid, Contract & Computer Aided Phones.

Place your profile on [prisonerassistant.com](http://prisonerassistant.com) and access our Special Features; Classifieds, Portfolios, Posts & Blogs, Market Place and Sponsor a Prisoner.

PO Box 704-AD1  
 Lake Harmony, PA 18624-0704  
[www.prisonerassistant.com](http://www.prisonerassistant.com)  
[info@prisonerassistant.com](mailto:info@prisonerassistant.com)  
 (570) 722-5800

For more information - send \$4.50 to "Prisoner Assistant" for an Application Package and 80 page color catalog. If you send an SASE you will only receive a brochure.

**JOIN NOW!**

**Business Development** **Credit Development**

**The services below are available to all prisoners - not just our clients**

**Send an SASE for our On Demand Brochure**

**Prisoner Assistant now offers select services to all prisoners No Membership Necessary!**

**On Demand Services**

**Banking and Financial Management Course**  
 120 pages, complete course with 8 chapters and exams. Transcript and Certificate available. Send \$30.00 to Prisoner Assistant at the address above with a request for the course. Open to Everyone.

**Personal Reentry Guide and Journal**  
 233 pages, complete course with 7 chapters and exams. Transcript and Certificate available. Send \$35.00 to Prisoner Assistant at the address above with a request for the course. Open to Everyone.

## New York Jail Guard Sentenced for Sexually Abusing Seven Prisoners

**A** FORMER GUARD AT THE MONROE County Correctional Facility in Rochester, New York received six months in jail plus 10 years' probation and was required to register as a sex offender after he pleaded guilty in April 2013 to sexually abusing seven female prisoners.

Former Sgt. Robert Wilson, 41, was sentenced after entering the plea to a 21-count indictment that accused him of engaging in criminal sexual contact with the prisoners for two years, from 2010 to July 2012. The charges included rape, sexual abuse and official misconduct. [See: *PLN*, Nov. 2013, p.56].

Four of the seven victims filed suit in federal court in October 2013 against Wilson and Monroe County Sheriff Patrick O'Flynn for unspecified compensatory and punitive damages, joining a previous lawsuit that was filed in July. The five suits, which also name Monroe County as a defendant, contend that O'Flynn and the county knew as early as 2010 that Wilson had an "inappropriate relationship" with a female prisoner but did nothing to stop his misconduct.

"These are five women that are at the lowest point in their life," said attorney Robert King, who is representing the victims. "What we know is that this happened time after time after time, woman after woman after woman, inside the jail and in some instances outside the jail after they were released."

Each of the lawsuits claims that "other members of the Monroe County Sheriff's Office allowed Sergeant Wilson to be alone" with the women, and one victim

alleged the Sheriff's Office was "alerted to the inappropriate relationship" but "did not investigate.... If they did investigate, the investigation was not sufficient," and officials "did not take action to remedy the situation and prevent future harm."

At the time of his indictment, Wilson was a 17-year veteran and supervisor at the jail; investigators said that for more than two years he used his position to sexually abuse female prisoners. He resigned after being charged.

"I find that Wilson's actions were obviously reprehensible and disturbing, and they are an embarrassment to our organization and to the community we serve," said Sheriff O'Flynn. "He was a supervisor in charge so he had access to the entire facility, and he had very calculated actions to be able to manipulate the system to accommodate his actions."

Investigators said they believe Wilson had relationships with many of the women before they entered the jail; he apparently did not take any of the prisoners off jail property, but did take them out of secure areas at times.

Monroe County District Attorney Sandra Doorley stated the victims deserve justice. "Regardless of what they've done in the past and where they are and what their situation in life is, if they are victims and a law is violated, we will represent their interest in court," she said.

The prisoners' lawsuits allege numerous sexual encounters involving Wilson. One of the victims said Wilson encouraged her "to strip tease in her cell while he watched," then

later directed her to perform oral sex. In another case, the victim claimed Wilson called her away from her cell for "unscheduled medical appointments" and led her into an office where he engaged "in personal, flirtatious and sexually explicit conversation."

The same victim's lawsuit also alleges that Wilson told her to "write sexually explicit letters to him, which she did," and "Wilson wrote a sexually explicit letter" back. She also claims that after she was released from jail, Wilson took her to his apartment and "tried to force" her to have sex "but allowed her to give him oral sex instead."

Another of the prisoners said Wilson came to her cell, sat on her bunk and "directed her to show him her breasts." The lawsuit filed by a fourth victim alleges that Wilson took her to a private room for sex after calling her into a hallway with the excuse that he had cleaning chores for her to do.

Authorities said Wilson was not reported by any of the prisoners he victimized; rather, an investigation was initiated after another staff member at the jail reported Wilson for improper use of computers, which led to the discovery of his sexual misconduct. The five lawsuits filed by Wilson's victims all remain pending. See: *Goodison, Jansen, Andrews, DiStefano and Knapp v. Monroe County*, U.S.D.C. (W.D. NY), Case Nos. 6:13-cv-06342, 6:13-cv-06566, 6:13-cv-06567, 6:13-cv-06568 and 6:13-cv-06569. ■

Sources: [www.corspecops.com](http://www.corspecops.com), [www.whbc.com](http://www.whbc.com), *Associated Press*, *Rochester Democrat and Chronicle*, [www.13wham.com](http://www.13wham.com)

# FREE JAIL CALLS

Get A Free, Guaranteed ConsCallHome Number &  
20 Minutes Of Free Talk Time Every Month.



Call: 855-232-2012



[www.FreeJailCalls.com](http://www.FreeJailCalls.com)





# BOP Grievance System Contributes to "Compliance or Defiance" by Prisoners

by Derek Gilna

A 2013 STUDY FOUND THAT THE GRIEVANCE system utilized by the federal Bureau of Prisons (BOP) appears to have become an important tool to defuse prisoner complaints, supporting the belief that the failure of BOP officials to adequately respond to grievances contributes to higher levels of violence in federal prisons.

The research study determined that another benefit of the BOP's grievance system is deflecting or reducing potential litigation. Indeed, many federal court decisions have been decided in the BOP's favor based upon prisoners' failure to exhaust administrative remedies as required by the Prison Litigation Reform Act.

The study, "Procedural justice and prison: Examining complaints among federal inmates (2000-2007)," was conducted by David M. Bierie with the U.S. Marshals Service and the Department of Criminology and Criminal Justice at the University of Maryland. Although it concentrated on what it termed the "procedural justice paradigm," the study also revealed what Bierie called an unexpected finding: "violence grew as the number of support staff per inmate (e.g., teachers, counselors) declined within a given prison. However, the opposite effect was found with respect to increases in custody staff per inmate within a given prison."

The study appears to validate the BOP's grievance system. "Generally speaking, people feel a process is more 'just' when their voice is heard before decisions are made, decision makers treat everyone equally, outcomes are proportionate, and there is a process of appeal or challenge if they don't agree with an outcome." The opposite is also true if the system is perceived to be unfair; thus, the grievance process plays "a central role in generating compliance or defiance" by prisoners.

The study makes liberal use of other research into the U.S. criminal justice system to lend weight to its conclusions. Several previous studies had found that a grievance system was not only about directly resolving problems, but also allowing prisoners to vent their frustrations and anger about perceived injustices by prison officials without resorting to violence.

According to the 2013 study, prisons "present an environment optimized to magnify the likely impacts of perceived injustice by presenting environments that are characterized by verbal threats and insults, physical pain, unpleasant odors, disgusting scenes, noise, heat, air pollution, personal space violations and high density."

Therefore, "[p]erceived injustice is serious, especially in the eyes of inmates, and the impact and relevance is further magnified by the environment they live in, delivering a near constant state of elevated and clustered strain."

The study found that the BOP's grievance system is perceived by some prisoners as overly formal and more concerned with procedural practices and deadlines than the substance of a complaint. Accordingly, "data suggest a higher volume of late or rejected [grievance] responses will increase violence."

Bierie examined data from the BOP's Sentry system, staffing levels in federal prisons, and other BOP documents showing the number and classification of prisoner grievances over a seven-year period from January 2000 through December 2007.

The research revealed that most complaints concerned issues related to discipline,

medical care and staff, with food, housing and use of force at the bottom of the list. The number of procedural grievance rejections and prisoner density (i.e., overcrowding) were tracked, as well as the ratio of prisoners to BOP employees, to determine if a relationship existed between those factors and levels of prisoner violence.

Interestingly, according to the study, the number of grievances appeared to peak in 2004 while assaults and serious violence within BOP facilities increased from 2000 through 2007, perhaps reflecting increased overcrowding in the federal prison system.

In addition to its other findings, the study concluded that "most features of the grievance process ... did not impact violence. Neither the volume of current complaints, nor the distributive justice outcomes predicted violence." However, "[t]wo features of the grievance process consistently predicted ... violence: the proportion of responses which were late, and the proportion of responses which were substantively rejected."

Source: "Procedural justice and prison: Examining complaints among federal inmates (2000-2007)," by David M. Bierie. *Psychology, Public Policy and Law*, Vol. 19(1), Feb. 2013

## Simple Business Consulting Prisoner Outreach Services

SIMPLE BROCHURE - SIMPLE PRICING  
FAST PROFESSIONAL SERVICE  
YOU CAN SET UP A SERVICE ACCOUNT  
FLAT FEES OR RETAINER FOR TERM PROJECTS

### FINANCIAL REQUIREMENTS

NO BANK ACCOUNT  
NO MINIMUM BALANCE  
NO MONTHLY FEE  
NO MEMBERSHIP FEE  
NO APPLICATION

PUBLISHING - VIRTUAL OFFICE - GRAPHIC DESIGN - MARKETING - BUSINESS

### Make a change today!

Do you have an idea, dream, goal or plan you have been wanting to develop? What are you waiting for?

Send SASE for our brochure....  
It is that  
**SIMPLE!**



SIMPLE BUSINESS CONSULTING  
3308 ROUTE 940 - SUITE 104-304  
MOUNT POCONO, PA 18344  
WWW.SIMPLEBUSINESSCONSULTING.COM

# England, Increasing Number of States Allow Same-Sex Prisoner Marriages or Civil Unions

**P**RISONERS IN ENGLAND, INCLUDING those in the highest security classification, are being allowed to enter into same-sex civil partnerships due to a policy change that mirrors changes to same-sex marriage laws in an increasing number of states in the U.S.

Prison Service Order 4445 outlines the requirements for prisoners in England and Wales seeking to enter into same-sex civil unions. The Order requires that both prisoners be of the same gender, over 16 years old, not related, not currently married and have at least three months remaining on their sentences. The Order also covers transsexual prisoners.

Prisoners are responsible for making all arrangements for the civil partnership ceremony and must pay all associated costs. They are allowed to invite guests, but only a reasonable number as determined by the prison governor. Before authorizing the civil partnership, prison authorities are required to make a risk assessment determination.

The Order applies to the Prison Service's population of around 86,000 prisoners.

In the United States, the Department of Justice announced in a February 2014 memo that it will grant full recognition to same-sex marriages to "the greatest extent possible under the law." U.S. Attorney General Eric Holder said the federal government is committed to equal protection.

"In every courthouse, in every proceeding and in every place where a member of the Department of Justice stands on behalf of the United States – they will strive to ensure that same-sex marriages receive the same privileges, protections, and rights as opposite-sex marriages under federal law," Holder stated.

For federal prisoners, the policy change means that same-sex spouses now have visitation rights, and prisoners can seek furloughs for a crisis involving a same-sex spouse. In federal court, same-sex couples now have the right to refuse to testify against their spouse, even in states that do not recognize same-sex marriages.

Gay rights advocates praised Holder's announcement, saying it will "change the lives of countless committed gay and lesbian couples for the better." Human Rights

Campaign President Chad Griffin told the *Washington Post*, "While the immediate effect of these policy decisions is that all married gay couples will be treated equally under the law, the long-term effects are more profound."

In August 2013, the California Department of Corrections and Rehabilitation (CDCR) issued a memo extending to state prisoners the right to marry same-sex partners. The memo followed a Supreme Court ruling that overturned Proposition 8, which had prohibited same-sex marriages in the state.

"Effective immediately, all institutions must accept and process applications for a same sex marriage between an inmate and a non-incarcerated person in the community, in the same manner as they do marriages between opposite sex couples," M.D. Stainer, director of the CDCR's Division of Adult Institutions, wrote in the memo.

However, "a currently incarcerated inmate shall not, at this time, be permitted to marry another currently incarcerated inmate" due to security concerns.

In Illinois, prison officials said a policy regarding same-sex marriages will be in place when a statute legalizing such marriages in the state takes effect on June 1, 2014. "The Illinois Department of Corrections will be prepared to implement a

policy regarding this law when it goes into effect," said spokesman Tom Shaer. Illinois state prison policy bans the marriage of two prisoners, but prisoners will be able to marry non-prisoners of the same gender.

Marriages between prisoners are also prohibited in Minnesota, but Minnesota Public Radio reported in September 2013 that state prison officials are considering how they will handle marriage requests by sex offenders who have finished their prison sentences but are considered too dangerous to be released. According to the news report, two male prisoners who have been civilly committed contacted local officials to request a marriage license. State law requires marriage license applicants to apply in person, however, and the Minnesota Department of Human Services denied the offenders' request for transportation to the licensing office.

In New York, the State Department of Corrections and Community Supervision held its first same-sex marriage at the Auburn Correctional Facility in December 2011, when a male prisoner married a former prisoner in a civil ceremony. [See: *PLN*, May 2012, p.37; April 2012, p.50]. ■

Sources: [www.dailymail.co.uk](http://www.dailymail.co.uk), *New York Daily News*, [www.pbs.org/newshour](http://www.pbs.org/newshour), [www.pantagraph.com](http://www.pantagraph.com), [www.mprnews.org](http://www.mprnews.org)

## Oregon Victim's Right to Restitution Survives Prosecutor's Statutory Violation

by Mark Wilson

**T**HE OREGON COURT OF APPEALS HELD that a prosecutor's failure to comply with state restitution laws did not deprive a trial court of authority to impose restitution after sentencing.

Oregon law requires the prosecutor to "investigate and present to the court, prior to the time of sentencing, evidence of the nature and amount" of a victim's damages resulting from a crime.

Cindie Wagoner was charged with identity theft. On October 15, 2009, the victim provided proof of her economic losses to Flores, a victim advocate assigned to her case by the Washington County

District Attorney's Office. However, Flores did not forward that information to the prosecutor.

Wagoner pleaded guilty and was sentenced in December 2009. The prosecutor noted that the time had passed for the victim to request restitution, and the trial court did not award any restitution. The January 5, 2010 judgment in Wagoner's case indicated that the restitution amount was zero.

Flores was terminated the following month. When other employees cleaned out Flores' desk they found the victim's October 15, 2009 proof-of-loss documents.

In March 2010, the victim filed a mo-



tion asserting that she had a right to receive prompt restitution under Article I, section 42(1)(d) of the Oregon Constitution.

After a hearing, the trial court agreed that the victim was entitled to restitution; the court then issued a May 24, 2010 supplemental judgment requiring Wagoner to pay restitution of \$800.

Wagoner appealed, arguing that because the prosecutor had failed to present

evidence of the victim's loss before sentencing as required by ORS 137.106, the trial court had no authority to subsequently impose restitution.

The Oregon Court of Appeals noted that it had "recently addressed a very similar question" in *State v. Thompson*, 257 Ore. App. 336, 306 P.3d 731 (Or. Ct. App. 2013), and found the ruling in *Thompson* controlled. The violation of ORS 137.106

"did not prevent the court from imposing restitution in order to provide the victim a remedy by due course of law, after it was discovered that her constitutional right to restitution was violated."

Accordingly, the trial court's order requiring Wagoner to pay restitution was affirmed. See: *State v. Wagoner*, 257 Ore. App. 607, 307 P.3d 528 (Or. Ct. App. 2013). ■

## Habeas Petitioner Cannot Avoid Payment of Appellate Filing Fees

by Michael Brodheim

**T**HE SEVENTH CIRCUIT COURT OF Appeals has held that a prisoner seeking collateral relief cannot avoid paying appellate filing fees.

Following a murder conviction, Indiana prisoner Kelly S. Thomas was sentenced to 65 years in prison. After his appeal and collateral attack were rejected in the state courts, he filed a federal petition for writ of habeas corpus under 28 U.S.C. § 2254. When that was denied he filed a notice of appeal. The district court judge declined to issue a certificate of appealability, instead certifying that the appeal was not taken in good faith.

Based on that certification, Thomas was required to pay appellate fees of \$455 before the Seventh Circuit would consider entertaining his appeal, unless he could persuade the appellate court to allow him

to proceed in forma pauperis. Even then he would still owe the fees – if he won, they would be shifted to the state as part of the appeal costs; if he lost, the fees would be "payable like any other debt."

Thomas filed a motion requesting that the Court of Appeals disregard the district court's certification of bad faith. He contended that prisoners are simply not required to pay appellate fees assessed under the Prison Litigation Reform Act (PLRA).

The Seventh Circuit rejected his argument, noting that appellate fees are authorized by 28 U.S.C. § 1913, which long predates the PLRA. The Court of Appeals gave Thomas 21 days to file a motion for permission to proceed in forma pauperis (which depends on demonstrating that he cannot

pay the fees and his appeal is not frivolous) and a certificate of appealability (which is dependant on a "substantial showing of the denial of a constitutional right").

The Seventh Circuit noted that an appeal can be non-frivolous and still fail to meet the standard for a certificate of appealability. Thomas filed a petition for writ of certiorari, which was denied on November 18, 2013. See: *Thomas v. Zatecky*, 712 F.3d 1004 (7th Cir. 2013), *cert. denied*. ■

### Roget's Thesaurus

Can't think of the right word?  
Let Roget's help you! Over 11,000  
words listed alphabetically.  
See page 61 for more information.

**PENACON.COM**

Helping the incarcerated community gain connections around the world!

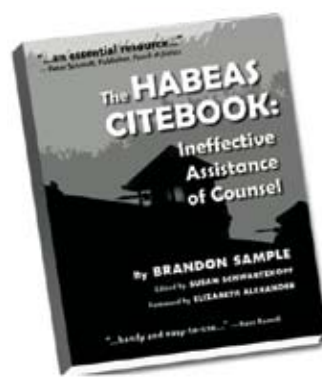
Post your profile on an easy to navigate website for millions of viewers to see. Gain new penpals and look forward to receiving mail!

One Year Ad Only \$35  
Until Release Date Ad \$95

Request a form today!  
Send a S.A.S.E. to:  
Penacon.com  
P.O. Box 1037  
Edna, TX 77957

USE CODE  
PLN5OFF  
FOR \$5 OFF





**FREE BOOK!**

Get *The Habeas Citebook* with purchase of a 4-year subscription to *Prison Legal News*. Offer good for new subscriptions and renewals.

Special limited time only! All sales final and no refunds. Order now for this great deal worth \$49.95.

**Prison Legal News • PO Box 1151 • Lake Worth, FL 33460**  
Tel [561] 360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

# Prison Officials Liable for Private Employer ADA Violations

by Mark Wilson

**T**HE NINTH CIRCUIT COURT OF APPEALS held last September that prison officials are liable for violations of the Americans with Disabilities Act (ADA) committed by private employer contractors.

Arizona law requires state prisoners to work 40 hours per week. Most are employed in the Arizona Department of Corrections' Work Incentive Pay Program (WIPP), earning from 10 to 50 cents per hour. Prisoners who work for Arizona Correctional Industries (ACI), which provides prison labor for private company contractors, earn significantly more.

One of those companies is Eurofresh, "America's largest greenhouse operation," which boasts that it can produce 200 million pounds of hydroponic tomatoes annually.

In July 2008, Arizona prisoner William W. Castle was hired by Eurofresh as a tomato picker, earning more than \$2.25 an hour. He was required to push a 600-pound tomato cart and stand or walk during his entire seven-hour shift.

Castle soon began suffering ankle swelling and pain when he stood longer than two hours. Decades earlier, Castle had received a 20% service-connected disability rating for an ankle injury sustained in an Army parachute accident.

After a Eurofresh supervisor told Castle he would be fired for taking breaks to rest his ankle, Castle asked ACI and Eurofresh to be reassigned to a different position. His request was denied and he was told his only option was to quit. Prison officials then moved Castle to a WIPP job in the motor pool, which paid only 50 cents an hour.

Castle filed suit against Eurofresh and state prison officials, claiming they had violated the ADA and the Rehabilitation Act by failing to accommodate his disability. The district court granted summary judgment to the defendants and Castle appealed.

The Ninth Circuit reversed summary judgment as to the prison officials, rejecting their argument that they lacked authority over Eurofresh employment decisions.

Following *Armstrong v. Schwarzenegger*, 622 F.3d 1058 (9th Cir. 2010) [*PLN*, Nov. 2011, p.28], the appellate court observed that government officials are liable

for ADA violations committed by private contractors.

Since ACI admittedly contracted with Eurofresh to provide "benefits" to prisoners, including paid labor and vocational training, the Court of Appeals concluded that "one benefit State Defendants may not harvest is immunity for ADA violations: State Defendants are obligated to ensure that Eurofresh – like all other State contractors – complies with federal laws prohibiting discrimination on the basis of disability."

Noting that the en banc court in *Hale v. Arizona*, 993 F.2d 1387 (9th Cir. 1993) [*PLN*, Sept. 1993, p.8] had held that prisoners are not "employees" entitled to minimum wage under the Fair Labor Standards Act, the Ninth Circuit found that "Castle is not Eurofresh's employee under the ADA because his labor belongs to the State of Arizona." Therefore, Eurofresh was not liable for its ADA violations and was entitled to summary judgment.

"Castle's claims against Eurofresh were properly dismissed because Castle and Eurofresh were not in an employment relationship, and Eurofresh does not receive federal financial assistance. However, judgment was improperly granted to the State Defendants. The State Defendants are liable for disability discrimination

committed by a contractor," the Court of Appeals concluded.

"A profit-seeking firm that hires convicts at its own worksite should not be shielded from the costs of compliance with the ADA," Circuit Judge Marsha S. Berzon wrote in a concurring opinion, encouraging reconsideration of *Hale*. "Permitting private employers to escape those costs while profiting from the use of prison labor markets undermines the enforcement of the statutory requirements generally, by creating incentives for competing employers to shirk compliance with regard to non-prison labor – and thereby economically disadvantaging competitors of those employers using prison labor."

Nevertheless, noting that precedent "forecloses consideration of such concerns," Judge Berzon reluctantly concurred that *Hale* precludes a finding that Castle was an "employee" under federal law. Thus, his only remedy is against Arizona prison officials. See: *Castle v. Eurofresh*, 731 F.3d 901 (9th Cir. 2013).

The case remains pending on remand, with the Arizona Department of Corrections filing a renewed motion for summary judgment on April 14, 2014. Castle, who has been released from prison, is proceeding pro se. ■

## Seventh Circuit Reverses Summary Judgment in Dental Care Suit

by David M. Reutter

**O**N JULY 19, 2013, THE SEVENTH CIRCUIT Court of Appeals reversed a grant of summary judgment to three defendants, holding there was sufficient evidence for a jury to find they acted with deliberate indifference to a prisoner's serious dental needs.

Richard M. Smego, a civil detainee at Illinois' Rushville Treatment and Detention Center, filed suit in federal court alleging that a dentist, two doctors and a dental hygienist had violated his constitutional rights.

When Smego arrived at Rushville, Dr. Jacqueline Mitchell, a dentist who contracts with Wexford Health Sources, examined

him in December 2005 and found he had twelve teeth with cavities. She promised to begin filling them in early 2006.

Yet it was not until June 24, 2007 – eighteen months later – that Dr. Mitchell saw Smego again. She provided no care during that visit, and it was not until the next month that she installed a temporary filling in one tooth but did nothing for his most painful tooth. In August 2007, she extracted the painful tooth and prescribed Motrin, a painkiller to which Smego was allergic.

Smego complained to his therapist about his persistent dental pain in November 2007, almost two years after he first

saw Dr. Mitchell. The therapist informed Dr. Michael Bednarz, Rushville's Medical Director, and Mitchell assured him that Smego was receiving appropriate care.

Dr. Hughes Lochard, a Wexford physician who saw Smego for an unrelated medical issue, examined Smego's teeth. While he said he did not want to get involved in dental issues, he prescribed Motrin for the pain and refused to prescribe any other medication.

Dr. Mitchell did not see Smego again until 2008, when she placed fillings in three of his teeth; three days after that visit, Smego filed his federal civil rights action. The district court granted summary judgment to the defendants and he appealed.

The Seventh Circuit disagreed with the district court's conclusion that Smego had failed to state viable claims or only alleged negligence by the defendants. The Court of Appeals found a jury could conclude that Mitchell failed "to spare Smego thirty months of serious dental pain by providing the treatment she herself already decided was necessary." Moreover, "Dr. Mitchell admitted that even five years after she had diagnosed Smego's cavities she still had not begun treating at least two of them," the appellate court noted.

There was ample evidence of Mitchell's personal contact with Smego, which made her aware of his tooth decay and pain. A jury could also conclude, the Seventh Circuit wrote, that what little care Dr. Mitchell provided was inappropriate.

The dental hygienist, Kelly Lawshea, told Smego to not be a "pest" when he spoke to her about his pain and difficulty in obtaining dental treatment. While she could not be held liable for failing to sched-

ule treatment or obtain supplies that were blamed as the cause of the delay in treatment, a jury could find her "pest" statement "discouraged Smego from taking more aggressive steps to receive treatment from the dental office."

As to Dr. Bednarz, the Court of Appeals found that Smego failed to present sufficient evidence of deliberate indifference. Bednarz took action by contacting Dr. Mitchell, and he was allowed to rely on her representations absent clear evidence that those representations were false. The opposite conclusion was reached as to Dr. Lochard, however. He never contacted Mitchell and did not defer to her, and had also prescribed the ineffective treatment of Motrin. In the latter regard, the Seventh Circuit noted that in a different case, another "Wexford physician repeatedly prescribed ibuprofen (the active ingredient in Motrin) despite a known allergy," citing *Olive v. Wexford Corp.*, 494 Fed. Appx. 671 (7th Cir. 2012).

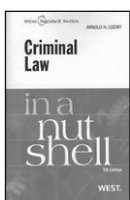
The district court's summary judgment order was vacated as to Mitchell, Lawshea and Lochard, and remanded for further proceedings. See: *Smego*

*v. Mitchell*, 723 F.3d 752 (7th Cir. 2013).

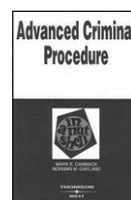
Following remand, Smego moved to disqualify U.S. District Court Judge Harold A. Baker from presiding over the case. He pointed out that Judge Baker had dismissed two of his lawsuits, both with findings that an appeal would be in bad faith. Both times, Smego appealed and the Seventh Circuit remanded the cases to the district court. Further, in one of those cases, Judge Baker had stated during a hearing that he wouldn't believe Smego "on a stack of Bibles." The judge also told the jurors after they ruled for the defendants that they had "vindicated" him, apparently referring to his prior dismissal of the case.

Judge Baker granted Smego's motion and recused himself on January 31, 2014. Smego subsequently settled his claims against Lawshea and Dr. Lochard in May 2014, while his claims against Dr. Mitchell are scheduled for trial on July 15, 2014. Notably, Smego litigated this case pro se, including on appeal. See: *Smego v. Adams*, U.S.D.C. (C.D. Ill.), Case No. 3:08-cv-03142-SEM-TSH. ■

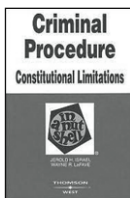
## New Titles Available in PLN's Bookstore



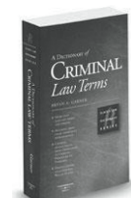
**Criminal Law in a Nutshell**, by Arnold H. Loewy, 5th edition, 387 pages. **\$43.95**



**Advanced Criminal Procedure in a Nutshell**, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **\$43.95**



**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFave, 7th edition, 603 pages. **\$43.95**



**A Dictionary of Criminal Law Terms (Black's Law Dictionary® Series)**, by Bryan A. Garner, 768 pages. **\$33.95**

### SMITH'S GUIDE to HABEAS CORPUS RELIEF for State Prisoners under 28 U.S.C. §2254

Example pleadings from the initial habeas corpus petition to the final petition for a writ of certiorari. Let Smith guide you step-by-step through the federal courts with confidence. 380 pages.

\$24.95 + \$6.95 shipping & handling. In CA add \$2.18 sales tax. Sent via USPS media mail. Money orders, personal or institutional checks ONLY. Send \$31.90 (In CA, \$34.08) payable to Roberts Company.

Send name, address, prisoner #, and payment to: Roberts Company, 15412 Electronic Lane #101 Huntington Beach, CA 92649. Also available on Amazon.com

- ☐ Criminal Law in a Nutshell ☐ Advanced Criminal Procedures in a Nutshell ☐ Criminal Procedure  
☐ Dictionary of Criminal Law Terms

Amount enclosed (add \$6 S&H for orders under \$50; free shipping over \$50) \_\_\_\_\_

By ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**PRISON LEGAL NEWS**

PO Box 1151 • Lake Worth, FL 33460  
Tel [561] 360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

# Judge May Resolve Exhaustion Issue; No Policy on Grievance Non-decisions Means Remedies Unavailable

by David Reutter

**T**HE THIRD CIRCUIT COURT OF APPEALS held on August 26, 2013 that a judge may resolve factual disputes relevant to the exhaustion of administrative remedies without the participation of a jury. It also held the district court had erred in finding a failure to exhaust where a prisoner did not receive a response to his grievances and appeals were not required in such circumstances.

Robert L. Small, a pretrial detainee at New Jersey's Camden County Correctional Facility (CCCF) and a paraplegic, filed a civil rights complaint alleging excessive force, denial of medical treatment, and confiscation of his wheelchair and its replacement with one without leg rests. The suit concerned events during two stints that Small served at CCCF between June and September 2004 and again between May 2005 and January 2008.

The lawsuit, originally filed in 2006, was amended by pro bono counsel in January 2008. The defendants moved for summary judgment in late 2009, claiming Small had failed to exhaust administrative remedies under CCCF's grievance policy. The district court dismissed all but one of Small's claims following an evidentiary hearing, and he appealed.

Small argued the Prison Litigation Reform Act requires that a jury, not a judge, determine factual disputes related to administrative exhaustion issues because Seventh Amendment rights are implicated.

The Third Circuit disagreed, joining the Second, Fifth, Seventh, Ninth and Eleventh Circuits in concluding "that judges may resolve factual disputes relevant to the exhaustion issue without the participation of a jury."

The appellate court then turned to the exhaustion issue itself. First, it found "Small knew of, and was able to access, CCCF's grievance procedures." Having concluded that administrative remedies were available to him, the Court of Appeals considered whether he had substantially complied with the jail's grievance process.

Small argued he had complied by submitting sick call requests and letters of complaint, some of which were sent to

people outside CCCF. The Third Circuit held those efforts were not substantially compliant with CCCF's grievance procedure.

However, as to two grievances that Small filed concerning incidents in 2005, the Court of Appeals held the district court had erred in finding Small did not comply with CCCF's grievance policy because he failed to appeal.

It was undisputed that neither of the grievances had resulted in a decision by jail staff, and the appellate court said it disagreed "that substantial compliance with CCCF's procedures requires appealing non-decisions." Rather, the jail's grievance policy addressed "only the appeal of a *decision* with

which the inmate is not satisfied," and did not "mention what must be done or even could be done by the inmate when a decision is never made."

As CCCF's grievance procedure "did not contemplate an appeal from a non-decision ... the appeals process was unavailable" to Small. The Third Circuit thus affirmed in part and reversed and remanded as to claims related to the two grievances that did not result in decisions by jail staff. See: *Small v. Camden County*, 728 F.3d 265 (3d Cir. 2013).

Following remand, the district court appointed counsel to represent Small on February 21, 2014. This case, now eight years old, remains pending. ■

## New York Prisoner Awarded Sanctions for Spoliation of Evidence; Case Settles for \$500,000

by Mark Wilson

**O**N SEPTEMBER 4, 2013, A NEW YORK federal district court held that a jail official was precluded from testifying in a prisoner's lawsuit about what she supposedly witnessed on surveillance video footage that had been erased. The court also granted the prisoner's request for an adverse inference jury instruction and attorney's fees.

In May 2011, guards did not intervene as New York City jail detainee Dwaine Taylor was savagely beaten by several gang members, including Batise Boyce, in a courthouse holding cell. He wasn't removed from the cell for approximately three hours.

When Taylor was finally taken to an emergency room, he was diagnosed with "jaw fractures on both ... sides of his face," an impacted tooth and another loose tooth. During surgery the next day, doctors closed the "jaw fractures with a metal plate and screws," removed one of his teeth and wired his jaw shut. Taylor was hospitalized for three days and then returned to the infirmary at the Rikers Island jail, where he remained for another month.

Within 15 days, officials prepared "an investigation 'package' recommending that Boyce be 're-arrested' for assaulting" Taylor. That package included copies of surveillance video footage. One week later, Boyce was indicted.

Taylor served notice of his intent to sue and on July 31, 2012 filed a failure to protect suit against jail officials in federal court. He alleged that the assault was sanctioned by guards "under a widespread practice called 'the Program,'" which permitted gang members to attack other non-gang-associated prisoners as a means of control.

"A ceiling-mounted, twenty-four hour surveillance camera" captured events in the holding cell during the assault. Assistant Deputy Warden Executive Officer Jacqueline Brantley reviewed the entire three hours of the video but saved just eight minutes, and the remaining footage was erased.

On June 7, 2013, Taylor moved for spoliation of evidence sanctions. The defendants claimed they had no duty to preserve the remaining three hours of video footage and that Brantley should be allowed to



testify as to what the rest of the footage depicted.

The district court disagreed, holding that Brantley was precluded from testifying about what she observed on the deleted surveillance footage. The court also granted Taylor's request for an adverse inference jury instruction and an award of reasonable attorney's fees and costs in connection with

the motion for sanctions.

The case settled in October 2013, with the defendants agreeing to pay \$500,000 inclusive of fees and costs. Taylor was represented by the Legal Aid Society and the law firm of Emery Celli Brinckerhoff & Abady, LLP. See: *Taylor v. City of New York*, U.S.D.C. (S.D. NY), Case No. 1:12-cv-05881-RPP. ■

## Seventh Circuit Admits Prisoner is Right but Denies Relief, Suggests Clemency

**T**HE ARMED CAREER CRIMINAL ACT (ACCA), 18 U.S.C. § 924(e), mandates sentence enhancements for certain federal defendants who commit crimes with firearms; those who have three or more prior "violent felonies" or "serious" drug offenses face a minimum 15-year prison term.

In some cases, however, prior state convictions should not qualify as "predicate" offenses for the purpose of triggering an ACCA sentence enhancement.

In April 2014, the Seventh Circuit Court of Appeals issued a ruling in a case involving federal prisoner Cody F. Ellerman, who had challenged his ACCA enhanced sentence for being a felon in possession of a firearm.

The appellate court noted that "Ellerman's frustration with his inability to obtain relief is understandable given that he is correct, on the merits, that he never should have been sentenced as an armed career criminal." The Court of Appeals found that "His prior drug convictions were all for selling marijuana in Kansas, ... and as level 3 felonies, did not subject him to a statutory maximum of at least ten years.... Accordingly, those convictions did not qualify as 'serious drug offenses' under 18 U.S.C. § 924(e)(2)(A)(ii), and Ellerman should not have been sentenced as an armed career criminal."

However, he had not filed a direct appeal to his 2003 conviction, his post-conviction appeals were untimely and the Seventh Circuit wrote it was "not empowered to correct the sentencing error."

The appellate court concluded: "Having fallen victim to the procedural complexity of collateral attacks, Ellerman is out of judicial remedies. But he may consider asking the President for a pardon or to commute his sentence." See: *Ellerman v. Walton*, Seventh Circuit Court of Appeals, Case No. 14-501

(April 21, 2014).

In cases raising similar issues, scores of federal prisoners convicted in North Carolina have been found legally innocent in firearm possession cases, including cases involving ACCA enhancements. Yet some of those prisoners have been denied relief and remain incarcerated, too. [See related article in this issue of *PLN*, p. 48].

Ellerman informed *PLN* in June 2014 that, following the suggestion of the Seventh Circuit, he had filed a petition for commutation with the Office of the Pardon Attorney. That may be an even longer shot than trying to obtain judicial relief, however, considering President Obama's paltry track record of granting requests for clemency. [See: *PLN*, Jan. 2013, p.32; May 2011, p.36].

In February 2014, the U.S. Department of Justice announced an expanded clemency initiative; the administration apparently has taken the change seriously, replacing Pardon Attorney Ronald Rodgers in April 2014.

The initiative may not help Ellerman's chances for commutation, though, as it only applies to federal prisoners who have served at least 10 years of their sentence, have no significant prior convictions, and were convicted of a nonviolent crime that would have resulted in a lower sentence had they been sentenced today. The expanded clemency initiative will be covered in greater detail in a future issue of *PLN*. ■

Additional source: [www.aclu.org](http://www.aclu.org)

**Hepatitis & Liver Disease:  
A Guide to Treating & Living  
with Hepatitis & Liver Disease**  
Revised ed. By Dr. Melissa Palmer  
See page 61 for more information.

## Awesome Deal

7photo pk.+ free cat.

For 7.50 or 20 stamps

For cat. Only send

2.75 or 9 stamps to:

**Picture Entertainment,**

PO Box 54806,

L.A., CA 90054

**We also buy stamps**

**at .31 each**

## Federal Writs

• • •

## Texas Parole

• • •

## Texas Writs

We will fight endlessly for your rights and to secure your freedom.

Time is of the essence for many remedies, so please contact our office today.

You do not have to accept this. You CAN keep fighting.

Is your freedom worth it?

Surprisingly affordable.

Law Office of

**David Rushing**

723 Main St. Ste. 816

Houston, TX 77002

713-877-1300

ADVERTISEMENT

# North Carolina Repeals Racial Justice Law

**I**N JUNE 2013, NORTH CAROLINA Governor Pat McCrory signed legislation repealing the state's Racial Justice Act of 2009 (the Act), a controversial law that supporters said was an effort to address racism in death penalty cases. Opponents, however, argued it merely clogged the legal system and denied justice to victims of the state's 154 prisoners sentenced to death.

"Nearly every person on death row, regardless of race, has appealed their death sentence under the Racial Justice Act," Governor McCrory said in a statement that accompanied his repeal of the law. "The state's district attorneys are nearly unanimous in their bipartisan conclusion that the Racial Justice Act created a judicial loophole to avoid the death penalty and not a path to justice."

The Act was passed following the exoneration of three North Carolina prisoners who had been wrongfully convicted and sentenced to death. All were black. [See, e.g.: *PLN*, Aug. 2010, p.32].

The Racial Justice Act allowed condemned prisoners to challenge a death sentence "sought or obtained on the basis of race" if they could prove that race was a factor in their prosecution, jury selection or sentencing, and to petition to reduce their sentence to life in prison without the possibility of parole. According to the North Carolina Department of Public Safety, slightly more than half – approximately 53% – of the state's death row prisoners are African-American. U.S. Census Bureau statistics indicate that blacks only comprise around 22% of the state's population.

When the Act was passed in 2009, opponents contended it was a thinly-veiled attempt by a Democratic governor and a Democrat-controlled state legislature to essentially do away with capital punishment. Due to various legal appeals, North Carolina has not carried out an execution since 2006. Republicans took control of the legislature in 2010, and McCrory, a Republican, was elected in 2012.

"It [the Act] tries to put a carte blanche solution on the problem," said Republican state Rep. Tim Moore. "A white supremacist who murdered an African-American could argue he was a victim of racism if blacks were on the jury."

Colon Willoughby, the district at-

torney in Wake County, which surrounds Raleigh, the state capital, said death row prisoners can already petition to reduce their sentences on the basis of racial bias under a U.S. Supreme Court ruling. He said the Racial Justice Act "came about and set up new artificial obstacles and barriers that were designed simply to put a moratorium on the death penalty and not to promote justice for anyone." As a result, he argued, the Act did nothing but clog North Carolina's courts.

"The premise of it is that somehow, because juries were white, that they discriminated against people, both white and black," he said. "The whole underlying concept of it is ridiculous."

"It's incredibly sad," countered Democratic state Rep. Rick Glazier, a long-time supporter of the Act. "If you can't face up to your history and make sure it's not repeated, it lends itself to being repeated."

Four prisoners have had their death sentences reduced to life without parole under the Act, all in 2012. In Cumberland County, the court cited a study which strongly suggested racial bias in jury selection. Researchers from Michigan State University who studied North Carolina cases between 1990 and 2010 found that prosecutors removed black citizens from juries in murder trials at more than twice the rate of other races.

"We think that essentially this legislature is sweeping evidence of racial bias under the rug, and it's really disappointing," said Sarah Preston, policy director for the ACLU of North Carolina. "Instead of looking at the cases that have passed as evidence of the necessity for the law, they have decided that it's evidence that the law should be repealed."

Preston and other legal experts said the question now is whether appeals still pending under the now-repealed Act will go forward or be dismissed. "Everyone who has made a claim under the Racial Justice Act is probably going to have to litigate over whether or not they continue to have a claim," Preston said.

The North Carolina legislature had been chipping away at the law ever since Republican control in the state government grew stronger. In 2012, the state House and Senate overrode then-Democratic Governor Bev Perdue's veto of legislation gutting

the Act, replacing it with an amended law that made it more difficult for prisoners to challenge their death sentences. Instead of using race-related statistics from the entire state or region, appeals under the Act were limited to statistical data from the judicial district where the crime occurred. The amended law also specified that statistics alone were not enough to prove racial bias, and that the race of the victim could not be considered.

The amended Act was written by Republican House Majority Leader Paul "Skip" Stam, who touted the measure as a means of ending the lengthy halt to executions in North Carolina.

"With [the] override of the governor's veto, the end of the moratorium is in sight," Stam said following the July 2, 2012 vote to amend the Racial Justice Act. "The basic principal of justice is restored: individual responsibility."

In debate leading up to the vote, local district attorneys and other supporters of the death penalty said changes to the Act would allow defendants to rely less on statistics that could mislead judges into finding that racism played a role in convictions and death sentences.

"I don't trust statisticians or people who came in after the fact to find some way to get cold-blooded killers off of death row," said state Senator Thom Goolsby, who is also a defense attorney.

"We should not allow racism to come into our courtrooms," countered state Senator Floyd McKissick during the veto debate. "Race still impacts the minds and the hearts and the consciences of many people who serve on our juries."

The Senate easily overrode then-Governor Perdue's veto, but in the House the vote was 72-48 – exactly the 60% majority needed. After using her veto power, Perdue said she supported the death penalty. "But it has to be carried out fairly – free of prejudice," she added.

In December 2012, following the legislative amendment to the Act, then-Superior Court Judge Gregory A. Weeks reduced the death sentences of three prisoners – two black and one Native American – to life without parole.

According to the American Bar Association, "Judge Weeks found that the prisoners met their burdens of proof ...

through the use of statewide and county-specific statistical evidence, as well as non-statistical evidence. This 'powerful evidence of race consciousness and race-based decision making' included hand-written notes from the Cumberland County prosecutor that noted the race of potential jurors who were black, sometimes associating them with drug or alcohol abuse. The prosecutor also repeatedly noted which potential jurors lived in predominantly black neighborhoods.... The prosecutor's notes did not indicate which potential jurors were white or lived in predominately white neighborhoods. Judge Weeks' ruling also noted that prosecutors had a 'cheat sheet' that instructed prosecutors how to deflect charges of racial bias in jury strikes. In one case, the prosecution struck black jurors at twice the rate of white jurors; in the other two cases, the rate was four times as high."

The court's ruling was "based primarily on the words and deeds of the prosecutors involved in these cases," Judge Weeks said. "Despite protestations to the contrary, their words, their deeds, speak volumes. During presentation of evidence, the court finds

powerful and persuasive evidence of racial consciousness, race-based decision making in the writings of prosecutors long buried in the case files and brought to light for the first time during this hearing."

Now that the Racial Justice Act has been repealed, however, whether death penalty cases in North Carolina will be "free of prejudice" – the phrase used by former Governor Perdue – is again a matter of debate.

On April 14, 2014, the North Carolina Supreme Court agreed to hear appeals in the cases of the four prisoners whose death sentences were reduced to life without parole under the Act – Marcus Robinson, Tilmon Golphin, Christina Walters and Quintel Augustine. Prosecutors are seeking to have their death sentences reinstated. The state Supreme Court is composed of seven justices; one is black and the other six are white. Not that race matters, of course. ■

Sources: *www.journalnow.com*, *Raleigh News & Observer*, *www.cnn.com*, *The New York Times*, *www.wral.com*, *www.americanbar.org*, *Associated Press*, *www.ncapd.org*

### WINNING HABEAS CORPUS & POST CONVICTION RELIEF Revised 4th Ed. 2012

Main subject: Ineffective Assistance of Counsel-"IAC"

Atty Kent Russel writes: "Simply the best source for a quick study on major subjects in the criminal process."

◊ A virtual law library in a book, major constructional issues

◊ 6th Amendment & IAC, Duty to investigate

◊ Forensics, Plea IAC, Jury Instructions

◊ §2254 & 2255 Procedure, Clearly established law

### POST COVICTION RELIEF FOR WASH. STATE-Personal Restraint Petition

The only book for Wash. State prisoners who seek collateral review by PRP or CrR 7.8 motion. Covers all aspects of preparing a PRP, time bar, facial invalidity, Plea bargain, sentencing, incl. case law & rules.

ORDER: (price incl. tax, plus S&H)

[ ] Winning Habeas Corpus... \$59.50

[ ] Post Conviction Relief for Wash. \$49.50

[ ] Both Books \$95.00

To: FAST LAW PUBLISHING

Box 577, Upland CA 91785 On-line [www.fastlaw.org](http://www.fastlaw.org)

## Stamps for CASH!

Great Goods will buy your stamps!

**70%** of Face Value: Complete books or sheets of Forever Stamps

**65%** of Face Value: Complete books, sheets, or rolls of 45-cent stamps

**60%** of Face Value: Complete books or sheets of high denomination stamps above 45-cent

Payment sent within 24 hours of receipt.

**W**E WILL SEND your funds as a money order, electronic payment to anywhere you designate. Great Goods can also send payment to an approved package vendor. Please provide complete name and address of where to send your funds. Also include any required forms or special instructions.

Minimum money order of \$20. • No quantity of stamps too big. • No taped or stapled stamps. • Used, damaged, torn stamps not accepted and cannot be returned. • Stamps MUST be on original postal backing. • Only new stamps accepted.

• No singles or partials will be accepted and they cannot be returned.

## GREAT GOODS

PO Box 399, West Chesterfield NH 03466

[www.greatgoods.org](http://www.greatgoods.org)

STAMPS © USPS. ALL RIGHTS RESERVED.

# Prison Closures Cause Economic Turmoil

**S**HRINKING STATE BUDGETS ACROSS THE country are leading to prison closures that in turn have a negative impact on communities that depend on the facilities as a source of jobs and revenue. [See: *PLN*, June 2013, p.1; April 2009, p.1]. Small towns in Kentucky, Georgia and New York are among those facing recent adjustments to this new economic reality, but some local residents and lawmakers have fought back with campaigns to keep the prisons open.

The city of Wheelwright, Kentucky was hit hard by the closure of the 600-bed Otter Creek Correctional Center, a prison owned and operated by Corrections Corporation of America (CCA). Officials said over 170 jobs were lost, although CCA pledged to relocate as many employees as possible to other facilities. The company said the June 2012 closing of Otter Creek was necessary after Kentucky did not renew its contact to house state prisoners at the facility.

"A lot of them [the employees] live within the city and a lot of them live in the community, you know," said Andy Akers, Wheelwright's mayor. "We're a tight knit community around here." Just before the closure of the prison, Akers had predicted a devastating impact on local businesses, fearing the city's economy would suffer.

"If you don't have jobs you can't spend money at them. Money keeps rolling over and over when you spend it," he said. "I hate to see it closing, but if there's any way we can help we're trying."

Kentucky also declined to renew its last contract with CCA in June 2013, to house prisoners at the company's 826-bed Marion Adjustment Center in St. Mary. State officials said the decision would save \$1.5 to \$2.5 million per year, and the prisoners will be moved to other facilities. CCA vice president Steve Owen said the non-renewal of the contract, resulting in the closure of the prison, was "disappointing" – though he was likely referring to the economic impact it would have on the company rather than the local community.

Kentucky DOC spokesperson Jennifer Brislin said the state would assist the 166 CCA employees whose jobs were eliminated due to the facility's closure.

"We understand that this creates uncertainty for them," she stated. "We're mindful that this creates an enormous challenge." However, "It's just to help with applications

and the like," she clarified. "Obviously, that doesn't guarantee a job" elsewhere.

Additionally, CCA announced in December 2013 that it would be closing the North Georgia Detention Center in Gainesville, Georgia due to a decline in the number of immigration detainees held at the facility. The closure will affect around 130 employees.

City Manager Kip Padgett said they "will be exploring all options for future use of the facility"; Gainesville had expected to receive \$825,000 in rent from the CCA-operated detention center for fiscal year 2014. The facility also had a \$7 million payroll and CCA spent around \$295,000 with local businesses.

"It was news to us," Gainesville Mayor Pro-Tem Bob Hamrick said, in regard to CCA's unexpected announcement that it was closing the detention center. "Obviously, it is a blow to our employment here. But, hopefully, we can come up with some way to not only absorb the employees that will be laid off but also to find some use for that facility."

In New York, a community group organized to prevent the state from closing the Chateaugay Correctional Facility as scheduled on July 26, 2014, which will eliminate up to 111 jobs with a \$5.8 million annual payroll. The Save Chateaugay Correctional Facility Task Force published a 30-page booklet describing the impact the closure will have on the community and Franklin County.

For example, the booklet compares the number of jobs lost in Chateaugay to the equivalent of 6,000 jobs lost in Brooklyn. It also notes that Chateaugay is the state's newest medium-security prison, and that it will cost less to operate once the facility starts using natural gas instead of fuel oil, taking advantage of a pipeline project in the county.

Chateaugay is one of four prisons scheduled to close under a proposal announced by New York Governor Andrew Cuomo in July 2013, but state lawmakers questioned whether the closures are truly justified. State Senator Kathleen Marchione, who has been critical of the plan, said "misplaced priorities" are to blame for closing 15 New York correctional facilities since 2011. She said she will fight to keep open the Mt. McGregor prison, a medium-

security facility located in the legislative district she represents.

"The closure of Mt. McGregor would cost our community 320 public safety positions and hurt the local economy," Marchione argued. "I disagree with the administration's closure proposal that would impact the public safety professionals who serve New York with honor and work in some of the toughest, most stressful and dangerous conditions imaginable."

In addition to Chateaugay and Mt. McGregor, the Cuomo administration has announced the closure of the Butler Correctional Facility in Red Creek and Monterey Shock Facility in Beaver Dams. Closing the four prisons will save an estimated \$30 million.

Groups that represent prison employees have mounted opposition to the closures, claiming that shutting down the four facilities does nothing to alleviate the condition of more than 10,000 state prisoners who are still double-bunked due to steps taken by former Governor Mario Cuomo in the 1990s to address prison overcrowding.

The New York State Correctional Officers & Police Benevolent Association called the state's decision to close the prisons "political posturing," "insulting" and "a show of disrespect." The association called on its members to hold rallies, sign petitions and contact their legislators to oppose the closures, urging them to "Stand with your brothers and sisters and stop the closures of more prisons and mental health agencies! Enough is enough! Your facility could be next!"

Local resolutions have been passed by officials in the cities and counties affected by the prison closures, including the towns of Wilton and Chateaugay as well as Chemung, Franklin, Wayne and Saratoga Counties.

Contending that the legislature was blindsided by the Cuomo administration's plan, Senator Marchione and State Assemblyman James Tedisco both introduced bills that would require approval by state lawmakers before any prisons could be closed. The legislation would also require the state to announce closings at least a year in advance.

Although the four facilities are expected to close as planned, the legislature imposed a two-year moratorium – until July 2016 – on any further prison closures.

Officials with the state Department of



Corrections and Community Supervision (DOCCS) said the crime rate in New York has fallen 13% over the past decade, reducing the need for prison capacity. Further, the state's prison population has dropped nearly 24% since 1999, from 71,600 to around 54,100.

"As the inmate population has continued to decline, prisons that are no longer needed can close," stated DOCCS Commissioner Anthony J. Annucci. "By pursuing policies that are tough, smart and fair, we can maintain or improve public safety on the outside, so there is less need to put offenders on the inside, delivering great savings to New York."

Meanwhile, prison officials pledged to do what they can to soften the impact on state employees. "At the time of the closure

announcement there were 673 employees at the four facilities," according to a DOCCS statement. "As of February 3, 2014, there were 386 staff remaining, and DOCCS personnel have been holding another round of meetings with those staff members to assist in planning their transitions."

State officials noted that since the closings were announced there has been "a gradual transition of staff to other prisons, other state agencies or retirement." ■

Sources: [www.wkyt.com](http://www.wkyt.com), [www.floydcounty-times.com](http://www.floydcounty-times.com), [www.pressrepublican.com](http://www.pressrepublican.com), [www.legislativegazette.com](http://www.legislativegazette.com), [www.gainesvilletimes.com](http://www.gainesvilletimes.com), [www.abc12.com](http://www.abc12.com), [www.mlive.com](http://www.mlive.com), [www.corrections.com](http://www.corrections.com), Associated Press, [www.kentucky.com](http://www.kentucky.com), *Atlanta Journal-Constitution*, [www.nyscopba.org](http://www.nyscopba.org)

## Administrators Fired at Privately-Run Texas Jail

**T**HE WARDEN AND HEAD OF SECURITY at the Liberty County Jail (LCJ) in Liberty, Texas have been fired in the wake of allegations that the chief of security sexually assaulted a female prisoner at the facility. The 285-bed jail is operated by the New Jersey-based Community Education Centers (CEC), a for-profit company.

Warden Timothy New and Chief of Security Kenneth Reid Nunn were fired in September 2012, just days after the county received a notice of claim from attorney Paul Houston LaValle on behalf of former LCJ prisoner Brandy Nichole O'Brien. O'Brien had been incarcerated at LCJ for failing to make timely child support payments.

According to the notice of claim, O'Brien "was repeatedly subjected to assault and battery, sexual assault, deviant sexual assault, humiliation, degradation and intentional infliction of emotional distress at the hands of Chief of Security Kenneth Reid Nunn and others" while incarcerated at the privately-run lock-up.

"Further, when Chief Nunn was repeatedly caught violating my client's rights by other members of the jail staff or sheriff's office, my client was threatened, coerced and coached on the statements she gave to investigators by Warden Tim New and others," LaValle wrote.

In a statement announcing the terminations of New and Nunn, CEC said it was working with law enforcement to investigate staff at the jail.

"The allegations, which have just come to the company's attention, apparently began approximately a year ago when, as a weekender, [O'Brien] encountered the jail's former employees and began cooperating with law enforcement," said CEC representative Christopher Creeder.

Liberty County has a \$4 million annual contract with CEC to operate the jail. CEC manages eight secure facilities in Ohio, Pennsylvania and Texas, and "provides a full range of therapeutic residential and non-residential reentry services with a documented record of reducing recidivism," according to the company's website. ■

Sources: [www.yourhoustonnews.com](http://www.yourhoustonnews.com), [www.cecintl.com](http://www.cecintl.com), [www.libertytxsheriff.com](http://www.libertytxsheriff.com)

## Pen Pals for Prisoners

Your ad on the Internet worldwide:

One year for \$9.95. Mail name &

address for FREE order form or online:

[www.PrisonerPal.com](http://www.PrisonerPal.com)

PO Box 19689

Houston, TX 77224

## STRENGTH STACK 52

114  
BODYWEIGHT  
EXERCISE  
CARDS  
INSIDE!



**JUST \$21.95!\***  
(shipping included)



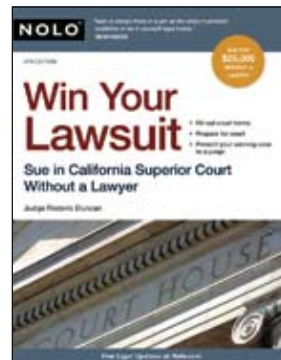
**Experience the  
Game of Fit!**

Send money orders or institutional  
checks made payable to:  
**Prisoner Assistant**  
Po Box 704  
Lake Harmony PA 18624

### Features:

- Soft cover book with perforated-card stock for playing cards.
- Many fitness games available.
- Effective NEW bodyweight training system.
- Exercise your entire body with no equipment.

## NOLO



## Win Your Lawsuit

Sue in California Superior Court  
Without a Lawyer

— \$39.99 —

Order from **Prison Legal News**

P.O. Box 1151

Lake Worth, FL 33460

561-360-2523

Add \$6 shipping for orders under \$50

[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

# North Carolina: Hundreds of Federal Prisoners Legally Innocent, Some Still Incarcerated

by Derek Gilna

**F**OLLOWING A 2011 FEDERAL APPELLATE court ruling, the U.S. Department of Justice (DOJ) initially tried to delay the release of federal prisoners who were wrongly convicted in North Carolina. The government later announced that it would halt such tactics, but has continued to oppose challenges filed by some offenders who are legally innocent.

The DOJ's actions followed a review of prosecutions in three federal courts in North Carolina. DOJ spokesman Wyn Hornbuckle said "many more" cases could surface when all of the state's federal court cases are examined.

The prisoners were convicted of possessing firearms in what the Fourth Circuit Court of Appeals held was a misapplication of the sentencing criteria, a circumstance unique to North Carolina due to the state's system of "structured sentencing." Adopted by the state legislature in 1993, the system mandates that the maximum prison term for any given crime is based on the offender's criminal record. As a result, sentences for even minor crimes can extend for years if a defendant has numerous prior offenses.

Federal law provides that anyone convicted of a crime punishable by more than a year in prison is considered a felon, and thereby prohibited from possessing a firearm or ammunition. However, that provision of federal law, as imposed by North Carolina federal courts, conflicted with the state's structured sentencing.

For example, an offender convicted of a minor crime in a North Carolina state court – writing a bad check, for example – would be considered a felon under federal law if his or her prior record was serious enough to warrant a prison sentence longer than a year. Federal courts proceeded under the notion that if one person convicted of writing a bad check was considered a felon, then all offenders convicted of writing bad checks were felons ... even if a defendant's record warranted a sentence of less than one year under the state's structured sentencing system. Consequently, offenders found in possession of a firearm were charged with violating federal law even if their prior state offenses should not have been considered felonies.

The Fourth Circuit held in August 2011, in *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) (en banc), that federal courts had been misapplying the law. Only those offenders who could have actually faced a prison sentence of longer than a year, the appellate court held, should be considered felons under federal law. As a result, scores of federal defendants should not have been prosecuted for being felons in possession of a firearm, because they didn't meet the legal definition of "felon" at the time they were charged.

The ruling in *Simmons* meant that about half of the convictions in North Carolina state courts over the past decade should no longer be considered felonies under federal law. A 2012 investigation by *USA Today* concluded that "none of them [prisoners serving time for firearm possession] had criminal records serious enough to make them felons under federal law."

*USA Today's* investigation examined firearm possession convictions in western North Carolina between 2005 and 2011, and "was limited to people who had been convicted only of gun possession and included only those cases in which federal prosecutors had specifically identified the prior offense that made possession a crime."

In the wake of *Simmons*, the DOJ initially did little to address the problem of offenders serving federal prison terms despite being legally innocent. In fact, the Department of Justice did not try to identify or notify the affected prisoners, and even argued in individual prisoners' cases that they should not be released.

DOJ officials claimed it wasn't their responsibility to inform prisoners who were serving sentences for what the Fourth Circuit had determined was no longer a crime. While federal prosecutors conceded the prisoners were innocent, they maintained that offenders affected by *Simmons* had to follow federal court rules and file motions challenging their convictions and sentences.

"We can't be outcome driven," said Anne Tompkins, the U.S. Attorney in Charlotte. "We've got to make sure we follow the law, and people should want us to do that." She added that her office was "looking

diligently for ways, within the confines of the law, to recommend relief for defendants who are legally innocent."

That effort apparently was not a high priority, however. Ripley Rand, the U.S. Attorney in Greensboro who conducted the DOJ's review of cases affected by *Simmons*, conceded that more than a third of the firearm cases prosecuted by his office might be called into question. "We're going to be addressing this for a while," he remarked. In fact, the 20 prosecutors in his office were so inundated by prisoners challenging their sentences that other prosecutions were placed on hold. "It's definitely been a huge burden," Rand said.

"No one wants anyone to spend time in jail who should not be there," noted one prosecutor in Raleigh, but convictions that are already final "are in a totally different posture and require us to follow the existing statutory habeas law." Rand added that he was "not aware of any procedural mechanism by which [the affected prisoners] can be afforded relief."

Defense attorneys disagreed, saying federal prosecutors should assume a greater role in identifying cases for review. "We're doing it with our hands tied," said Eric Placke, a Greensboro public defender. "I appreciate the compelling considerations they have to deal with. But I do think in cases of actual innocence that it would be nice, to say the least, if they would be a little more proactive." He said his office was handicapped by limited access to records in closed cases.

Legal experts agreed that the procedural approach to such cases was not an easy one. Saying "I'm innocent" may not be sufficient for a successful challenge, according to Nancy King, a law professor at Vanderbilt University. Nevertheless, she noted, "innocent people should be able to get out of prison."

Following *Simmons*, federal judges have freed numerous prisoners and removed others from post-release supervision. Some had been incarcerated for up to eight years. Since *Simmons* was decided, it has been cited in over 200 Fourth Circuit decisions and more than 960 rulings in North Carolina district courts as of July 1, 2014.

One of the first federal prisoners to have his conviction vacated was Terrell McCullum. Prosecutors had opposed his release. "At most, [McCullum] has become legally innocent of the charges against him," federal prosecutors stated in an April 2012 court filing, arguing that he still had a criminal record and possessed a gun, and should not be freed.

In August 2012, U.S. District Court Judge James Fox rejected the prosecution's arguments and reversed McCullum's conviction "in the interests of justice," even though he had already completed his sentence and been released a month earlier.

"After careful consideration, the Department of Justice has decided to take a litigating position designed to accelerate relief for defendants in these cases who, by virtue of a subsequent court decision, are no longer guilty of a federal crime," DOJ spokeswoman Adora Andy said shortly before the court ruled in McCullum's case. "We are working with the court, the probation office and the federal public defenders to ensure that these matters are addressed as effectively and quickly as possible."

Another federal prisoner, Marion Howard, was freed on December 5, 2012 after appealing to the court in a letter to "please rule on my case before the holidays" so he could be home with his family. Many other prisoners have since been released as a result of the *Simmons* decision, and cases are still working their way through the court system.

On May 23, 2014, for example, U.S.

District Court Judge Martin Reidinger ruled on a pro se habeas petition filed by federal prisoner Marvin Barnette. "The Government concedes that the Petitioner's motion has merit, and although the motion was untimely presented, the Government agrees to waive the defense of the statute of limitations to Petitioner's claims," the court said.

"Petitioner's sentence was enhanced based on his prior convictions for breaking and entering.... As the Government concedes, and as reflected by the state-court judgments relevant to these convictions, these offenses were Class H felonies, and at the time Petitioner was convicted of these offenses, Petitioner was a prior record level II," Judge Reidinger wrote. "As such, the maximum sentence Petitioner could have received for either of these offenses was 10 months. Because Petitioner could not have received a sentence of more than one year in prison based on these convictions under North Carolina law, *Simmons* dictates that these convictions no longer qualify as 'violent felonies' for purposes of the ACCA [Armed Career Criminal Act]."

Judge Reidinger vacated Barnette's sentence and granted a resentencing hearing. See: *Barnette v. United States*, U.S.D.C. (W.D. NC), Case No. 3:08-cr-00124-MR-1; 2014 U.S. Dist. LEXIS 71118.

On April 8, 2014, the Fourth Circuit held that a defendant sentenced as a career offender before *Simmons* was decided, but who could not be designated a career offender after *Simmons*, constituted a "fundamental miscarriage of justice" that warranted

equitable tolling of the statute of limitations and habeas relief. See: *Whiteside v. United States*, 748 F.3d 541 (4th Cir. 2014).

However, others have not been as fortunate. Federal prisoner Clyde Dial, Jr. filed a motion to vacate under 28 U.S.C. § 2255 challenging his guilty plea to two charges with an Armed Career Criminal Act enhancement, arguing that "the convictions used to apply the enhancement no longer qualify as felonies" after *Simmons*. He had received a 176-month prison sentence. However, as part of his plea agreement Dial waived his right to challenge his conviction or sentence under 28 U.S.C. § 2255.

The DOJ opposed Dial's motion and sought to enforce the terms of the plea agreement. The district court agreed with the government, finding in a June 18, 2014 order that Dial had knowingly waived his right to seek relief – even though he was legally innocent with respect to the ACCA enhancement. See: *Dial v. United States*, U.S.D.C. (E.D. NC), Case No. 7:02-cr-00090-F1; 2014 U.S. Dist. LEXIS 83017.

The ACLU of North Carolina estimated in 2012 that more than 3,000 federal prisoners may be entitled to relief as a result of *Simmons*, including reduced sentences or release from prison, because they are legally innocent. In some cases, though, such innocence means little to federal prosecutors. ■

Sources: *USA Today*, [www.whiteandhearne.com](http://www.whiteandhearne.com), [www.reason.com](http://www.reason.com), *Associated Press*, [www.pagepate.com](http://www.pagepate.com)

## LAW OFFICE OF BENJAMIN RAMOS

705 E Bidwell, Suite 2-359  
Folsom, CA 95630  
916-358-9842

EXPERIENCED HABEAS CORPUS PRACTITIONER,  
ADMITTED IN ALL CALIFORNIA STATE AND FEDERAL COURTS

[www.lawofficeofbenjaminramos.com](http://www.lawofficeofbenjaminramos.com)

- 28 Successful Habeas Corpus Petitions Against the BPH/Governor/CDCR
- Numerous successful appeals in criminal cases in California State Courts
- Representation in *Federal Court* on § 2255 Motions and Federal Appeals
- Parole Hearing Representation since 2000, appointed to more than 700 parole cases; numerous private parole hearing clients; successful law practice since 1991.
- Writs Challenging Parole Denial/Governor Reversal
- Writs Challenging Bogus Gang Validation Decisions
- Writs to Enforce Broken Plea Agreements

# Do Faith-Based Prisons Work?

by Alexander Volokh

THERE ARE A LOT OF FAITH-BASED PRISON programs out there. As of 2005, 19 states and the federal government had some sort of residential faith-based program, aimed at rehabilitating participating prisoners by teaching them subjects like “ethical decision-making, anger management, victim restitution” and substance abuse in conjunction with religious principles.

One of them – the InnerChange Freedom Initiative program in Iowa – was struck down on Establishment Clause grounds in 2006, but various faith-based prison programs still exist, including InnerChange programs in other states. InnerChange programs, which are explicitly motivated by Christian and Biblical principles, are probably more vulnerable to constitutional challenges; programs that are more interfaith and have less explicitly religious content, like Florida’s Faith- and Character-Based Institutions or the federal Life Connections Program, are probably less so.

Faith-based prisons continue to be promoted as promising avenues for reform, chiefly on the grounds that they improve prison discipline and reduce recidivism. Unfortunately – even if we ignore the constitutional issues – most of the empirical studies of the effectiveness of faith-based prisons have serious methodological problems and, to the extent they find any positive effect of faith-based prisons, can’t be taken at face value. Those few empirical studies that approach methodological validity either fail to show that faith-based prisons reduce recidivism, or provide weak evidence in favor of them.

\* \* \*

THE MOST SERIOUS PROBLEM WITH STUDIES of the effectiveness of faith-based prisons is the self-selection problem. Prisoners obviously choose faith-based prisons voluntarily. And the factors that would make a prisoner choose a faith-based prison may also make him less likely to commit crimes in the future. (One such factor might be religiosity itself). Also, a prisoner who takes the trouble to choose a rehabilitative program may be more motivated to change, and this may make him more likely to change.

As a result, faith-based programs

might *appear* to have better results because its participants have lower recidivism rates – but this might have nothing to do with whether the programs actually “work.” A program with zero effect that successfully attracts better prisoners will appear to have better results – in fact, even a program that’s slightly *harmful* (i.e., has a negative “treatment effect”) might appear to have better results, as long as it attracts prisoners who are sufficiently better (i.e., has a positive “selection effect”). If the positive selection effect is greater than the negative treatment effect, the program might fool naïve observers into thinking it’s a success.

Therefore, what we certainly don’t want to do is just compare the results of participants in a faith-based program with those of non-participants. (Nonetheless, some studies do this!). This presents the self-selection effect in its most naked form – and the results of such a study can’t be taken seriously.

Other studies are slightly more sophisticated. They compare the group of participants with a matched group of non-participants, where non-participants are matched to participants based on various observable factors like race, age, criminal history and the like. Thus, suppose there are 100 participants and 1,000 non-participants. As stated above, we shouldn’t just compare the 100 with the 1,000 – the 100 are systematically different from the 1,000, because the 100 chose to participate and the 1,000 didn’t. The 100 have some sort of motivation that sets them apart from everyone else, even apart from any effectiveness of the program. Instead, what these studies do is take the 1,000 non-participants and identify 100 who “look like” the 100 participants – each of the 100 non-participants is as close as possible to one of the participants in race, sex, age, education and other observable factors. The hope is that comparing the 100 participants with the 100 *matched* non-participants will make for a more valid comparison.

Alas, this hope is probably unjustified. Even if you could perfectly match the 100 participants with 100 non-participants who looked very similar, you can only match prisoners based on *observable* factors like

race, sex, age and so on. But one of the most important factors – motivation to change – is unobservable. So, in my view, these studies, though somewhat more sophisticated, still aren’t good enough to overcome the self-selection problem.

The third type of study uses a more sophisticated statistical technique called “propensity score” matching. Participants are matched to participants not based on observable factors directly, but based on their propensity score, that is, their estimated probability of participating in the program. But these propensity scores are generated using observable characteristics like race, sex, age, education and so on. Motivation remains unobservable, and that’s still one of the most important factors in whether a released prisoner reoffends. So propensity scores still don’t solve the self-selection problem.

So far, we’ve seen three types of studies – naïve comparisons of participants to non-participants, matching based on some observable characteristics, and matching based on propensity scores. None of these three types of studies are credible because they don’t account for self-selection. Prisoners who are motivated enough to choose to participate in a rehabilitative program are already less likely to reoffend. So any study that compares voluntary participants and voluntary non-participants may just be picking up the effect of being a good person, not the effect of the program itself. (Some of these studies are subject to even further sources of bias. For instance, in addition to self-selection in the decision whether and how intensively to participate, there can be selection by the program staff in the decision of whom to admit or whom to kick out, as well as “success bias” in the consideration only of those who completed the program without dropping out).

In my view, the only credible studies so far fall into a fourth category – those that compare (voluntary) participants in faith-based programs with people who volunteered for the program but were rejected.

Finally, a class of statistically valid studies! Unfortunately, the results from these studies generally aren’t good. In a 2003 evaluation of the Texas Inner-



Change program, there was no significant difference between how well accepted and rejected volunteers did in terms of two-year arrest or reincarceration rates. Same goes for a 2003 evaluation of the Biblical Correctives to Thinking Errors program at Indiana's Putnamville Correctional Facility, a 2004 evaluation of the Kairos Horizon Communities in Prison program at Florida's Tomoka Correctional Institution and a 2009 evaluation of Florida's dorm-based "faith and character" programs.

I've looked at two evaluations of an *after-care* program for ex-prisoners, the Detroit Transition of Prisoners program. This program may confer some benefits, though it's hard to say because the results aren't reported in a form that would make this easy to determine. But even if this program is successful, we still have to grapple with the "resources problem": The studies compare participation in the program either with the alternative of no program at all or with the "business as usual" alternative of whatever other programs happen to be available, rather than with participation in a comparably funded secular program.

Thus, even if a religious program is better than nothing at all, it could be because of the greater access to treatment resources (for instance, mentors and counselors) and not because of the religious content of the program.

\* \* \*

IN THE END, THIS ARTICLE HAS BAD NEWS and good news.

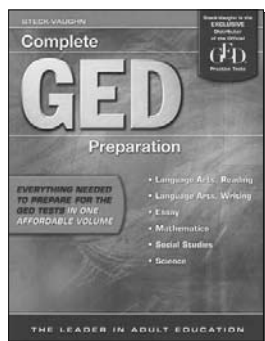
The bad news, as explained above, is that most studies are low-quality and the results of the higher-quality studies aren't promising. There seems to be little empirical reason to believe that faith-based prisons work.

The good news is that there's also no proof that they don't work. The absence of statistically valid or statistically significant findings isn't the same as the presence of negative findings. And while the self-selection problem is real and important, the resources problem may not even be a problem at all: maybe the "zero alternative" or the "business as usual" alternatives really are proper empirical baselines, since they reflect both reality and, perhaps, political feasibility. So the picture isn't uniformly bleak;

there are some programs that seem to show some statistically significant effects, even if they're weak and even if we're not sure how well they compare to the hypothetical effects of a hypothetical, comparably funded secular program.

Perhaps future research will shed light on these questions. In the meantime, clearly some groups want to have faith-based prisons, some prisoners want to attend them and they probably do little if any harm. If some programs don't work, this is an indication to future practitioners that something needs to be changed; if some programs work, maybe they can be replicated elsewhere. Better results won't emerge unless they're allowed to emerge by a process of experimentation. ■

*Alexander Volokh blogs at the Volokh Conspiracy ([www.washingtonpost.com/news/volokh-conspiracy](http://www.washingtonpost.com/news/volokh-conspiracy)) and is an Associate Professor of Law at the Emory University School of Law; this is a synopsis of his research on faith-based prisons, which was published in the Alabama Law Review (Vol. 63, 2011). He provided this article exclusively for Prison Legal News.*



### **Complete GED Preparation** [Paperback]

Publisher: Steck-Vaughn; 2nd edition  
928 pages; \$24.99; Item #: 1099

Over 2,000 GED-style questions thoroughly prepare learners for test day. This single book offers thorough coverage of the revised GED Test with new test information, instruction, practice, and practice tests. Answer key included.

Order from: **Prison Legal News**  
(Add \$6 shipping for orders under \$50)  
**PO Box 1151**  
**Lake Worth, FL 33460**  
**Phone: (561) 360-2523**  
**[www.prisonlegalnews.org](http://www.prisonlegalnews.org)**

## **SUBSCRIPTION MADNESS 2014**

Our Subscription Madness promotion has been so successful in the past that we have decided to offer it again!

PLN is offering a discount on blocks of 2 or 4 one-year subscriptions for any person not a current or former subscriber who has a US address, whether they are imprisoned or not. Subscription Madness is the only opportunity attorneys, librarians and corrections professionals have to receive a PLN subscription at a fraction of the normal rate of \$90 per year, and for prisoner family members and concerned activists to subscribe at a steep discount from the normal rate of \$35 per year. Prisoner subscriptions are also less than the normal \$30 per year. Check out these discounts!

- **\$50 buys 2 one-year subscriptions (\$25 each)**
- **\$80 buys 4 one-year subscriptions (\$20 each)**

If you want to take advantage of Subscription Madness but are stumped for people to send them to, PLN can provide names of indigent prisoners who would love a PLN subscription. Use a separate piece of paper to order by mail, call our office to order with a credit card, or go to our website to order online. **No Renewals!** Sorry, but Subscription Madness is for new one-year subscriptions only, and cannot be used to renew or extend a current or former subscription. PLN is a 501(c)(3) non-profit. (Subscription Madness 2014 expires 12-31-2014).

**Prison Legal News, PO Box 1151, Lake Worth, FL 33460**  
**561-360-2523; [www.prisonlegalnews.org](http://www.prisonlegalnews.org)**

# SEC Rejects CCA, GEO Group Shareholder Resolutions to Reduce Prison Phone Rates

ON FEBRUARY 18, 2014, THE SECURITIES and Exchange Commission (SEC) granted a request filed by for-profit prison company GEO Group to exclude a shareholder resolution that sought to reduce the high cost of phone calls made by prisoners at GEO-operated facilities. Ten days later, the SEC granted a request by Corrections Corporation of America (CCA) to exclude a similar shareholder resolution.

The resolutions, filed by Alex Friedmann, managing editor of *PLN* and associate director of the Human Rights Defense Center (HRDC), would have required the companies to forgo “commission” kickbacks from prison phone service providers. [See: *PLN*, Jan. 2014, p.44]. Such kickbacks are typically based on a percentage of revenue generated from inmate telephone services (ITS) – revenue that is mostly paid by prisoners’ families.

Specifically, the shareholder resolutions stated that GEO and CCA “shall not accept ITS commissions” at their facilities, and that when the companies contract with prison phone service providers they “shall give the greatest consideration to the overall lowest ITS phone charges among the factors [they consider] when evaluating and entering into ITS contracts.” CCA and GEO both filed no-action requests with the SEC seeking to exclude the resolutions from their proxy materials.

According to its SEC filings, GEO Group received \$608,108 in prison phone kickbacks in 2012. The shareholder resolution submitted to CCA noted that one of the company’s jails, the Silverdale Detention Facility in Chattanooga, Tennessee, received a commission of 48% of prison phone revenue, and that a 15-minute call from that facility cost as much as \$9.75.

On February 11, 2014, a Federal Communications Commission (FCC) order went into effect that caps the cost of long distance prison phone calls nationwide at \$.25 per minute for collect calls and \$.21 per minute for debit and prepaid calls. The order does not apply to intrastate (in-state) prison phone rates, however, which remain high at many correctional facilities. [See: *PLN*, Feb. 2014, p.10; Dec. 2013, p.1].

Research has consistently found that prisoners who maintain close connections

with their families while incarcerated have better post-release outcomes and lower recidivism rates. As stated by FCC Commissioner Mignon Clyburn: “Studies have shown that having meaningful contact beyond prison walls can make a real difference in maintaining community ties, promoting rehabilitation, and reducing recidivism. Making these calls more affordable can facilitate all of these objectives and more.” [See: *PLN*, April 2014, p.24].

GEO Group objected to the shareholder resolution by arguing that Friedmann had a “personal grievance” or would personally benefit from reducing prison phone rates at the company’s facilities; that the resolution did not address an issue significantly related to the company’s business; that it lacked the power or authority to implement the resolution; that the proposal concerned GEO’s ordinary business operations; and that the resolution constituted “multiple proposals.”

“GEO Group basically threw the kitchen sink at the resolution seeking to exclude it, and was ultimately successful,” said Friedmann. “This is what happens when essential public safety and criminal justice services, such as operating prisons, are contracted out to a private corporation without a conscience that is only interested in making money.”

He added, “Make no mistake, when GEO claims it is interested in rehabilitating offenders, as it does on its website, it is merely providing lip-service. GEO Group had an opportunity to make a real difference in terms of increasing the ability of prisoners to stay in touch with their families, which would benefit our communities through lower recidivism rates and thus less crime and victimization. Instead, the company protected its profits from prison phone kickbacks.”

Similarly, with respect to CCA, Friedmann said: “The company claims that it’s interested in rehabilitating offenders, but when faced with a resolution that would have reduced phone rates at its for-profit facilities, thereby having a rehabilitative effect on prisoners and resulting in less recidivism, CCA decided its profits from prison phone kickbacks were more important. Which demonstrates that despite its corporate PR rhetoric, CCA cares little about rehabilitation or public safety.”

Friedmann was ably represented before the SEC by attorneys Jeffrey Lowenthal and Jon Burke with the New York-based law firm of Stroock, Stroock & Lavan. ■

Source: *HRDC press releases* (March 3, 2014 and Feb. 19, 2014)

## Seventh Circuit: No Qualified Immunity for Diabetic Detainee’s Death

by Mark Wilson

ON AUGUST 20, 2013, THE SEVENTH Circuit affirmed a district court’s denial of qualified immunity in a case concerning an Illinois pretrial detainee’s death due to medical neglect.

Phillip Okoro, 23, was arrested for a misdemeanor property offense in October 2008 and held at the Williamson County Jail. Although *Gerstein v. Pugh*, 420 U.S. 103 (1975) requires a probable cause hearing to be held within 48 hours, Okoro was incarcerated for 69 days without such a hearing.

As a teenager, Okoro was diagnosed with Type I diabetes, which he controlled by carefully monitoring his blood sugar levels. In college, however, Okoro’s health deterio-

rated when he suffered from schizophrenia and stopped monitoring his diabetes.

Williamson County contracts with Health Professionals, Ltd. (HPL) to provide medical care at the county jail. Immediately after his arrest, Okoro’s family alerted jail and medical staff about his mental illness and diabetes.

While incarcerated, Okoro was confined in an isolation cell under the care of HPL employees Dr. Jogendra Chhabra and Nurse Marilyn Ann Reynolds. He was dependent on jail and medical staff to monitor his blood sugar levels, provide insulin shots and deliver other necessary medical treatment.

On December 23, 2008, Okoro collapsed in his cell and died from diabetic ketoacidosis, a buildup of acidic ketones in the bloodstream that occurs when the body runs out of insulin.

Okoro's sister, Jaclyn Currie, filed a federal lawsuit against jail officials, HPL, Dr. Chhabra, Nurse Reynolds and others. She alleged the defendants were deliberately indifferent to Okoro's medical needs and his death was "completely preventable" with adequate medical care, regular blood sugar monitoring and sufficient insulin.

Currie initially claimed violations of the Eighth and Fourteenth Amendments. "At the close of discovery, however, in response to the defendants' motion for summary judgment, Currie argued for the first time that the Fourth Amendment's 'objectively unreasonable' standard should govern," since Okoro was a pretrial detainee. The district court granted Currie leave to amend her complaint to allege a Fourth Amendment violation.

Shortly after that ruling the county and jail officials settled with Currie, leaving HPL and its employees, Chhabra and Reynolds, as the only remaining defendants.

The HPL defendants then moved to dismiss, claiming they were entitled to qualified immunity because the Fourth Amendment has not been applied to medical professional subcontractors. When the district court denied their motion, Chhabra and Reynolds filed an interlocutory appeal.

"A jailer might violate an arrestee's Fourth Amendment rights by unreasonably denying the arrestee access to insulin," they argued, "but a health care professional who unreasonably withholds insulin does not."

The Seventh Circuit found their argument lacked "support in law or logic," noting that "from the perspective of the arrestee, it matters not a whit whether it is the jailer or the doctor whose conduct deprives him of life-saving medical care."

Following the Sixth Circuit's reasoning in *McCullum v. Tepe*, 693 F.3d 696 (6th Cir. 2012), the appellate court found "the contours of Okoro's Fourth Amendment rights were 'sufficiently clear that a reasonable official would understand that what he is doing violates that right' throughout the period of Okoro's detention."

The Court of Appeals also rejected the defendants' argument that they were entitled to qualified immunity because they

were unaware of Okoro's legal status as a pretrial detainee.

Such an argument "assumes that health care providers calibrate the level of medical care they provide to a jail inmate based on their assessment of the inmate's legal status, taking advantage of the right to be sloppy where the standard is lower," the Seventh Circuit observed. "We sincerely hope that this is not how Chhabra, Reynolds, and Health Professionals, Ltd. go about caring for those in the State's custody." The appellate court concluded that "if the

defendants truly tailor their care (or lack thereof) in this fashion, then their failure to ascertain Okoro's correct status cannot be characterized as a 'reasonable' mistake, and their qualified immunity claim still fails." See: *Currie v. Chhabra*, 728 F.3d 626 (7th Cir. 2013).

Following remand, Dr. Chhabra agreed to settle the case in December 2013 for \$775,000, resolving claims related to the remaining HPL defendants. Okoro's sister was represented by the Chicago law firm of Loevy & Loevy. ■

## Update on PLN Suit Against Nevada DOC

**P**RISON LEGAL NEWS CONTINUES ITS efforts to defend its First Amendment right to communicate with prisoners in the Nevada Department of Corrections (NDOC). In 1999 the NDOC banned all copies of PLN, claiming the publication constituted "inmate correspondence." PLN filed suit and was granted a preliminary injunction requiring delivery of PLN subscriptions and mail to Nevada prisoners. The state entered into a consent decree in September 2000, agreeing that prisoners "shall be permitted to subscribe to the publications of their choice," subject only to specified security concerns.

However, ongoing censorship of PLN's monthly magazine and books resulted in a June 2013 lawsuit in which PLN seeks to enjoin the unconstitutional censorship of its publications by prison officials. [See: *PLN*, Nov. 2013, p.18]. In conjunction with the lawsuit, PLN also filed a motion for an order to show cause in the prior suit, seeking to hold the NDOC in contempt for violating provisions of the 2000 consent decree by enacting and enforcing policies that continue to censor PLN's monthly publication and book orders sent to Nevada prisoners. The federal district court later consolidated the two cases.

On June 17,

2014, the NDOC filed a motion to dismiss PLN's suit, claiming a revised mail policy (AR 750) resolved any constitutional issues with the old mail policy. The court has not yet ruled on the motion; a jury trial in the case is scheduled for January 27, 2015. See: *PLN v. Cox*, U.S.D.C. (D. Nev.), Case No. 3:00-cv-00373-HDM-WGC.

PLN relies on information we receive from prisoners to assist us in our litigation, and we invite Nevada readers to contact us concerning censorship of mail and books at NDOC facilities. Specifically, whether prisoners receive notice when mail is withheld or censored, whether they have participated in an appeals process, and if they are receiving book orders without "pre-approval." Nevada prisoners can contact us in these regards at: Prison Legal News, Attn: NV DOC Suit, P.O. Box 1151, Lake Worth, FL 33460. ■

### CALIFORNIA LIFER NEWSLETTER

**Published by Life Support Alliance**

**CLN: Comprehensive newsletter mailed every 8 weeks containing state and federal cases, parole board news, statistics, legislation and articles of interest to Lifers and their supporters.**

#### CLN SUBSCRIPTIONS

Prisoners .... \$30 per year (or 100 stamps)  
Others .... \$90 per year

**Make checks payable to LSAEF**

(Life Support Alliance Education Fund)

**CLN, P.O. Box 277, Rancho Cordova, CA. 95741**

*CLN no longer provides copy service of legal cases, articles or news and materials from the Internet.*

[www.lifesupportalliance.org](http://www.lifesupportalliance.org) (916) 402-3750

# Flimsy Reasons for Prolonged, Frequent Lockdowns State Eighth Amendment Claim

by David Reutter

**T**HE SEVENTH CIRCUIT COURT OF APPEALS has held that an Illinois prisoner's complaint that frequent lockdowns for substantial periods of time deprived him of exercise and caused him various health problems stated an Eighth Amendment claim. However, the Court found that he failed to state a due process claim concerning the loss of his monthly stipend due to the lockdowns.

The appellate ruling followed a district court's dismissal, under 28 U.S.C § 1915A, of a civil rights complaint filed by Menard Correctional Center (MCC) prisoner Gregory J. Turley. The dismissal addressed Turley's Eighth Amendment claims but not his Fourteenth Amendment claim.

The Seventh Circuit determined that Turley had exhausted his administrative remedies and had brought his action in a timely manner, noting that Illinois has a "two-year statute of limitations, which is tolled while the prisoner exhausts the administrative grievance process." As he was not procedurally barred, the Court of Appeals turned to the merits of the case.

Turley, serving a life sentence, was classified as a "low-aggression offender" and housed in a unit of similarly classified prisoners. Between January 7, 2008 and October 4, 2010, there were 25 lockdowns imposed at the MCC. The longest lasted 81 days and there were 534 total lockdown days, which amounted to lockdown status for "more than 50% of the period in question."

The lockdowns, Turley argued, were "often imposed for non-penologically-related purposes, such as isolated fights between two inmates from other cellhouses, rumors of a potential fight or for no reason at all." He further contended "the excessive use of lockdowns arose out of a conspiracy among prison officials and union employees to create a staff shortage and negotiate a pay raise."

Additionally, he alleged "a conspiracy to exaggerate prison response to minor incidents, or no incidents at all, in order to allow staff to take vacation and/or to psychologically punish all prisoners for the misconduct of a few." Finally, he claimed the lockdown periods resulted in his \$10

monthly idle pay stipend to be withheld, depriving him of due process.

The Seventh Circuit initially found the district court had wrongly concluded that Turley failed to list the specific periods of lockdown confinement at issue. It then rejected the state's reliance on a lockdown case involving a single prisoner, *Pearson v. Ramos*, 237 F.3d 881 (7th Cir. 2001) [PLN, Oct. 2001, p.18]. In doing so, the appellate court rejected the notion of "an ironclad rule that a denial of yard privileges shorter than 90 consecutive days cannot be the basis for an Eighth Amendment claim."

Rather, the Court of Appeals wrote it had previously explained the "norm of proportionality" should be applied in such cases, and that a lockdown not exceeding 90 days could violate the norm if it were "imposed ... for some utterly trivial infraction of the prison's disciplinary rules."

In this case, the Court said it was "confronted with a pattern of prison-wide lockdowns, which Turley alleges occurred for flimsy reasons or no reason at all." He alleged serious injuries resulting from the inability to exercise outside or in his small cell, in the form of "irritable bowel syndrome, severe stress, headaches, and tinnitus."

While the appellate court held that prison officials were made aware of Turley's Eighth Amendment claims through his grievances and prior lawsuits by other MCC prisoners, it found he had a post-deprivation remedy for the stipend claim through the Illinois Court of Claims, thus his due process claim failed. The district court's judgment was reversed in part as to Turley's Eighth Amendment claims and affirmed as to his due process claim, and the case remains pending on remand. See: *Turley v. Rednour*, 729 F.3d 645 (7th Cir. 2013). ■

## Illinois \$50 State's Attorney Fee Applies Only to Habeas Proceedings

by Mark Wilson

**T**HE ILLINOIS SUPREME COURT HELD in September 2013 that a \$50 State's Attorney fee authorized in habeas corpus cases does not apply to non-habeas collateral proceedings.

After an Illinois trial court dismissed a post-conviction petition filed by state prisoner Omar Johnson, he submitted a petition for relief from judgment under section 2-1401 of the Illinois Code of Civil Procedure.

The state moved to dismiss the petition and requested that Johnson be assessed filing fees and court costs under section 22-105(a) of the Code of Civil Procedure, for filing a frivolous petition.

The trial court granted the state's motion to dismiss and assessed fees and costs against Johnson, including a \$50 State's Attorney fee pursuant to section 4-2002.1(a) of the Counties Code, which authorizes the fee in habeas corpus cases. Johnson appealed, lost in the appellate court and the Illinois Supreme Court granted review.

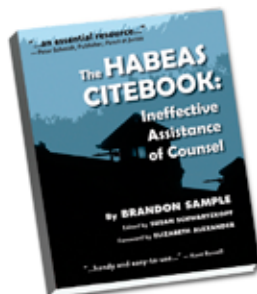
The Supreme Court interpreted section 4-2002.1(a) to determine whether the legislature had intended the fee to extend beyond habeas cases to all collateral proceedings.

"Giving the term 'habeas corpus' ... its plain and ordinary meaning," the Court concluded the fee "only applies to the various types of habeas corpus proceedings." The Court held that "collateral proceedings such as a section 2-1401 petition and a post-conviction petition" are not habeas proceedings, and the legislature did not intend for the fee to "apply 'generically' to all collateral proceedings."

As such, the state Supreme Court reversed in part the judgment of the trial and appellate courts, and remanded with instructions to vacate the \$50 State's Attorney fee. See: *People v. Johnson*, 2013 IL 114639, 995 N.E.2d 986 (Ill. 2013).

Although a legal victory, the ruling may be small consolation for Johnson, who is serving natural life plus at least 60 years. ■





## The Habeas Citebook: Ineffective Assistance of Counsel

**\$49.95**

Brandon Sample  
ISBN: 978-0-9819385-1-6  
Paperback, 224 pages

The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an invaluable resource that identifies hundreds of cases where the federal courts have granted habeas relief to prisoners whose attorneys provided ineffective assistance of counsel.

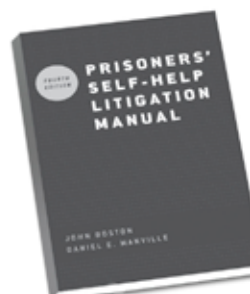


## Prisoners' Guerrilla Handbook to Correspondence Programs in the United States and Canada, 3rd Edition

**\$49.95**

Jon Marc Taylor  
ISBN: 978-0-9819385-0-9  
Paperback, 224 Pages

The greatly anticipated and newly updated third edition of the Prisoner's Guerrilla Handbook to Correspondence Programs in the United States and Canada has finally arrived! Author Jon Marc Taylor's brand new version is the latest in this unique and highly successful guidebook for the prisoner-student. This invaluable tool and how-to handbook provides the reader with step-by-step instructions to find the appropriate education program for correspondence high school, vocational, paralegal, undergraduate, and graduate courses offered in the U.S. and Canada today.



## Prisoners' Self-Help Litigation Manual, 4th Edition

**\$45.95**

John Boston & Dan Manville  
ISBN: 978-0-1953744-0-7  
Paperback, 960 pages

Prisoners' Self-Help Litigation Manual, in its much-anticipated fourth edition, is an indispensable guide for prisoner litigants and prisoner advocates seeking to understand the rights guaranteed to prisoners by law and how to protect those rights. Clear, comprehensive, practical advice provides prisoners with everything they need to know on conditions of confinement, civil liberties in prison, procedural due process, the legal system, how to actually litigate, conducting effective legal research, and writing legal documents. It is a roadmap on how to win lawsuits.

- ☐ Habeas Citebook,  
Ineffective Assistance of Counsel  
\$49.95
- ☐ Prisoners' Guerrilla Guide to  
Correspondence Programs  
3rd edition  
\$49.95
- ☐ Prisoners' Self-Help  
Litigation Manual  
4th edition  
\$45.95

**Shipping included in all prices**

**Order by mail, phone, or on-line.** Amount enclosed \_\_\_\_\_

By: ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

PUBLISHED BY

**PRISON LEGAL NEWS**  
Dedicated to Protecting Human Rights

PO Box 1151 • Lake Worth, FL 33460  
Tel 561-360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

## News in Brief

**Arizona:** A prisoner serving time for gang- and drug-related offenses, as well as his attorney-wife, mother, sister, ex-wife and another woman have been indicted on more than 250 charges following a two-year investigation into the New Mexican Mafia prison gang. Angel Lopez Garcia is accused of being a gang leader who has, since at least 2007, directed drug sales, extortion, money laundering and gang violence from behind bars with assistance from the women named as co-defendants. His wife, Phoenix criminal defense attorney Carmen Fischer, and the four other women accused in the conspiracy, Rosio Robles Gonzales, Oralia L. Garcia, Tanya Garcia-Ochoa and Rosemary Ann Garcia, were arrested on October 4, 2013. Fischer pleaded guilty on March 31, 2014 and was sentenced to three years in prison.

**Arkansas:** St. Francis County deputies have filed a number of new charges against Jonathan Paulman, 22, who was in jail for burglary when he set fire to his cell on October 15, 2013. Paulman told jail officials that he had started the fire as a way to get out to attend his young son's birthday party. He used a contraband cigarette lighter to torch a mattress, towel and laundry bag in the cell he shared with four other prisoners. Paulman told deputies that he planned to blame the arson on someone else. No one was injured in the blaze.

**California:** A licensed bail agent in Modesto was arrested on November 26, 2013 on various charges related to his soliciting gang members at the Stanislaus County Jail to carry out violent crimes, including murder. Praveen Singh, who is also known as "Prajeer Singh," was arrested following a lengthy joint investigation by the Modesto, Turlock and Ceres Police Departments, Stanislaus County Sheriff's Department and Stanislaus County District Attorney's Office.

**Colorado:** Former deputy Matthew Andrews initially pleaded not guilty to helping prisoner Felix Trujillo escape from the downtown Denver Detention Center. [See: *PLN*, Nov. 2013, p.56]. On November 22, 2013, however, he pleaded guilty to a felony charge of attempting to influence a public servant. "What you did is not only a dishonor to yourself but the whole sheriff's department," the judge told Andrews when he sentenced him on January 24, 2014 to

the maximum six years in prison.

**Delaware:** State police announced on November 20, 2013 that Christopher Peck, a guard at the Sussex Correctional Institution, had been arrested and charged with sexual misconduct. Peck, 39, faces 11 counts of sexual relations in a detention facility. A 19-year-old prisoner reported that she had sex with Peck, and in the course of the investigation police learned that two other prisoners, aged 27 and 28, had also been victimized by the guard. Peck entered a guilty plea to six of the charges and was sentenced to three years in prison on June 6, 2014.

**District of Columbia:** Trey Radel – now known as the "Cocaine Congressman" – voted to allow states to drug test food stamp recipients. It turns out that he should have been the one tested for drugs. Radel pleaded guilty to buying cocaine in an FBI and DEA sting operation, and was sentenced in November 2013 to one year of probation and residential substance abuse treatment. According to the Associated Press, Radel's guilty plea to the misdemeanor drug possession charge was the first by a sitting congressman in 31 years. Radel is fortunate to have been sentenced in D.C., where a special drug court handles certain drug offense cases.

**Florida:** Two Orange County jail guards were fired on October 11, 2013 after fighting on a charter bus while headed home from a charity event. Michael Dean and Donald Casey had been drinking when Dean thought Casey made comments about his girlfriend, also a jail guard. Investigators said Dean initiated the fight by throwing a punch, and afterward Casey threatened to stab him. The bus driver said all of the jail employees were "very drunk and very rude," and had trashed the bus. Dean was reinstated to his job in January 2014 but demoted.

**Florida:** Alexander Lansky, a property clerk at the Pinellas County Jail, admitted to having an addiction to prescription pills when detectives interviewed him following complaints from two prisoners who said their legally-prescribed painkillers were missing from their property when they were released from jail. The sheriff's office accused Lansky of stealing Vicodin, Percocet and morphine pills from five prisoners, and he was charged with five counts of grand theft and five counts of possession of pre-

scription drugs on October 22, 2013.

**Idaho:** The Idaho Department of Correction announced on November 13, 2013 that it was suspending visitation for all prisoners in Unit 2 at the Pocatello Women's Correctional Center after a prisoner tested positive for hepatitis A. Prison staff also suspended all prisoner transfers into and out of the facility while health care providers watched for more possible cases. Unit 2 prisoners were scheduled to receive hepatitis A vaccine and immune globulin as a precaution.

**Illinois:** Former Wills County courthouse bailiff Jerome W. Henry was sentenced in August 2013 to three years in prison for possession of child porn. On November 14, 2013, Judge Sarah Jones granted his motion to reconsider and resented him to 147 days in jail, three years' probation, 130 hours of public service and \$2,999 in fines and costs. The 130 hours of public service was later waived. Henry, 63, is registered as a sexual predator in the state's online sex offender database.

**Illinois:** On November 26, 2013, Illinois DOC spokesman Tom Shaer said officials at the minimum-security Taylorville Correctional Center were trying to control an outbreak of a skin rash, with at least 17 prisoners reporting symptoms of intense itching. One prisoner was diagnosed as having scabies. One wing of a housing unit was placed on quarantine, and prisoners showing signs of the rash were isolated before being returned to a special quarantine room.

**Iran:** Reza Heydarpour, arrested by the Ministry of Intelligence on November 4, 2013, has not been heard from since being transferred to Evin Prison. Heydarpour was the physician who completed a report on the death of Internet blogger Sattar Beheshti, who died at Evin Prison in October 2012. Beheshti's death was reported by many as the result of severe beatings and torture following his arrest for his online activities. In 2009, another Iranian prison physician, Ramin Pourandarjani, died under suspicious circumstances.

**Libya:** A Libyan security official who spoke with the Associated Press on condition of anonymity said unknown gunmen had attacked the prison in Sabha on November 29, 2013 and succeeded in releasing 40 prisoners. The gunmen helped

the prisoners escape by opening fire and threatening the guards; prison director Shaaban Nasr said scores of escapees later surrendered.

**Montana:** Former prison nurse Tisha Ann Brunell, 45, was facing 53 charges for engaging in sexual misconduct with a prisoner. [See: *PLN*, Sept. 2013, p.17]. A jury trial was held on March 22, 2014 and Brunell was found guilty of 48 of the charges. After she is sentenced, she faces another trial for trying to threaten a witness while she was out on bond.

**New York:** On November 7, 2013, prisoner Armando Ortiz was subjected to a random frisk search at the Marcy Correctional Facility and guards found a handmade sharp instrument attached to his prosthetic leg. A local prosthetics company called in to disassemble the leg found four more razor weapons and a small amount of Suboxone. Ortiz, who was serving 1½ to 3 years for attempted felony assault, faced disciplinary charges but no new criminal charges were filed.

**North Carolina:** Matthew Ethelbert Toney was fired and charged with a felony on November 22, 2013. Toney, a Durham County sheriff's jailer since 1996, is accused of engaging in sexual activity with a prisoner; he posted a \$30,000 bond following his arrest and was released.

**Ohio:** James Miracle was fired from his job at the Mansfield Correctional Institution on November 22, 2013. As a building construction supervisor at the prison he was required to properly supervise tools that were used during the July 2013 escape of

prisoner James David Myers. Myers, who was serving a life sentence, used a pickax to break into a storage area to get three ladders, which he then used to climb over security fences. He was captured one day later by customers at a convenience store. Miracle also was accused of falsifying forms and forging signatures on maintenance inventories, which "compromised or undermined the security of the institution."

**Oklahoma:** A former guard at the Corrections Corporation of America-operated Cimarron Correctional Facility was charged in November 2013 with bringing contraband into the prison. Alyson Frances Posey was approached by prisoner Reeco Cole, who told her that the father of one of her children, who was incarcerated at another prison, owed him money. She agreed to bring tobacco into the facility to pay off the debt, then began smuggling other contraband for cash payments. She also gave nude photos of herself to Cole. Investigators said Cole denied having any relationship with Posey.

**Oklahoma:** On November 23, 2013, Mayes County jailer Aaron Peters appeared in court to enter a not guilty plea to a charge of rape by instrumentation. Peters, 23, was assigned to supervise a female prisoner during her stay at a hospital. He allegedly entered the bathroom where the prisoner was showering and performed sexual acts on her; she subsequently passed out from the medication she was taking, and awoke to find Peters engaging in sex acts with her. The prisoner's complaint interview was conducted while she was wearing Peters' shirt;

she had also stolen his handcuff key.

**Oklahoma:** The Associated Press reported on November 23, 2013 that seven state prisoners were hospitalized over a three-week period with symptoms of salmonella poisoning. Nearly 100 prisoners at the Eddie Warrior, Jim E. Hamilton, Joseph Harp and Bill Johnson correctional centers reported symptoms. Department of Corrections spokesman Jerry Massie said it was uncommon for so many prisoners to fall ill at different facilities. The state Department of Health is investigating the source of the outbreak.

**Pennsylvania:** After a traffic stop on November 11, 2013, John Vincent was arrested on an outstanding warrant. When he was booked into the Northampton County Prison, a strip search revealed that he had attached 18 packets of heroin to his penis with a rubber band. Vincent was charged with possession of drug paraphernalia, possession of heroin and providing false identification to a law enforcement officer. His bail was set at \$50,000.

**Pennsylvania:** Six members of the group Citizens for Social Justice were told by Delaware County officials that they did not need a permit to peacefully protest across from the George W. Hill Correctional Facility. When the group gathered on November 5, 2013 at the Community Education Centers-operated prison to highlight issues of abuse and improper releases, they were met by a large show of force and told to move more than a mile away. "They had about 20 guards, K-9s, county police; it looked like a whole Gestapo troop," said



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription!

Quarterly drawing WINS \$100! (Void in New York)  
(Last Quarter's winner from Airway Heights, WA.)

TELL YOUR FRIENDS! ACT NOW!!



PO Box 2063 • Fort Walton Beach FL. 32549

[www.InmateMagazineService.com](http://www.InmateMagazineService.com)

## Inmate Magazine Service

## News In Brief (cont.)

Pastor Keith Collins, one of the protest organizers. Collins said the group would like to meet with both CEC and the County Prison Board, and encourages the formation of a citizen advisory board to enhance accountability at the prison.

**Texas:** On October 31, 2013, fourteen former workers from the McConnell Unit were sentenced in federal court on racketeering and drug charges. Eleven other people also were convicted for their roles in the scheme. The large-scale criminal enterprise was uncovered when the Texas Department of Criminal Justice and federal agencies began investigating the McConnell Unit in 2009. The Aryan Circle and Mexican cartels were involved in the scheme, which included organizing drug deals outside the prison.

**Texas:** Among other responsibilities, former Winkler County Attorney Steve Taliaferro prosecuted misdemeanor cases. He resigned from his position and pleaded guilty on November 6, 2013 to solicitation of prostitution and official oppression. Taliaferro was audio-recorded propositioning a woman and telling her he would settle her case if she consented to having sex with him. Under the terms of his plea agreement, Taliaferro was ordered to serve 45 days in the Winkler County Jail.

**Texas:** On November 6, 2013, an East Texas parole officer pleaded guilty and was sentenced to 42 months in federal prison for using his state computer to view child pornography. Barry Porter Griffith was arrested after Texas Department of Criminal Justice computer engineers detected an unusual amount of bandwidth being accessed by a system in Griffith's office. Officials were able to remotely view the websites he

was visiting and discovered the presence of child porn. Griffith also surrendered two personal computers that contained child pornography.

**United Kingdom:** The Ministry of Justice was fined £140,000 on October 22, 2013 after it emailed confidential personal information about HMP Cardiff's 1,182 prisoners to families of other prisoners. A spreadsheet containing names, addresses, offense details, sentence length, ethnicity and release dates was mistakenly sent to three families, according to the Information Commissioner's Office. "The potential damage and distress that could have been caused by this serious data breach is obvious," said Director of Data Protection David Smith.

**Utah:** Former Salt Lake City Judge Virginia Ward, who had presided over countless misdemeanor drug cases, was sentenced on November 19, 2013 to 90 days in

## PLN Classifieds

### INMATE SPORTS LINES + NEWS

Emailed to you daily  
INFO@forthescoop.com  
PO BOX 90594  
San Antonio, TX 78209

### AMBLER DOCUMENT PROCESSING

Type, Design and Prepare  
Manuscripts for Self-Publishing  
Reasonable Rates! Accept all Genres!  
P.O. Box 938, Norwalk, CT 06852

### INMATE PHOTO SERVICE

Mail your photo to us  
We scan and email your  
Photo to family + friends  
INFO@forthescoop.com  
PO BOX 90594  
San Antonio, TX 78209

### WINNING LEGAL BRIEFS

Example legal briefs on prisoner  
issues that have WON favorable  
decisions in state & fed courts.  
For catalog send \$1.50 to W.  
Barron, 122 Lakeshore Dr, Unit  
704-D037, Lake Harmony, PA 18624  
\$1.50 credit towards your order.

### The VOICES.CON Newsletter – Free

Written by lifers for lifers. For info on how  
to receive Voices.Con monthly, send  
SASE to: PO Box 361, King City, CA 93930.  
On the web at: VoicesDotCon.org;  
Email: Publisher@VoicesDotCon.org

### FINALLY REAL LADIES/REAL LETTERS

Genuine, friendly, compassionate  
Writers! GUARANTEED RESPONSES!  
WE'RE WAITING FOR YOUR LETTERS!  
Send a SASE 4 this GREAT news!  
Nubian Princess Ent. Est 1998  
POB 37 PLN  
Timmonsville, SC 29161

### CONNECT TO OUTSIDE WORLD!

PP provides services via internet  
Your information - social networks  
10 sites 20 US, 20 sites 30 US  
Free Brochure  
PRISONER PROMOTIONS  
2355 Fairview Ave #214  
Roseville, MN 55113

### Ms. Tahtianna Fermin

387 Sheperd Ave, Suite 3A  
Brooklyn, NY 11208  
All types of Legal Services  
Inexpensive, from all areas of  
law, information on anything.  
Specializing in all prison  
litigations/civil and criminal.

### Inmate Services! E-mail, Legal

ads/Walmart Release  
Clothing? Send SASE to: Morris  
Inmate Serv. 312 E Burke St #B  
Martinsburg, WV 25404

### No Bull – Not a Scam

Direct from Inmateshopper.com  
400 Pen Pal addresses \$15.98  
15% with Photos. 50% American  
50% Overseas. No two lists are  
the same – RUSH \$15.98 TO:  
Inmate Shopper, Box 4311  
Mission, TX 78574 INFO/SASE

### IF YOU WANT THE BEST TRY EPS!

Legal Research & Forms, Internet  
& People Searches, Amazon Books,  
Erotic Photos & Stories, PenPals,  
Special Requests and Much More.  
Send SASE to: Elite Paralegal &  
Prisoner Services, PO Box 1717,  
Appleton, WI 54912

### GET PUBLISHED, \$ FOR SCHOOL

Inmate anthology seeks authors &  
cover artist. Send up to 2 poems  
(must be signed) & 1 prose piece  
(10pg max) & cover art to NFC,  
1957 W Burnside #1660, Port OR  
97209 by July 15. Published au-  
thors will earn \$ for NFC classes



jail and three years of probation after pleading guilty to possession of Oxycodone with intent to distribute. Although Ward had initially faced up to 15 years in prison, her attorney said the sentence was “disappointingly harsh.” Courtroom observers thought differently; one man reportedly commented “slap on the wrist,” while another said, “I would have gotten the same sentence for a speeding ticket.”

**Virginia:** Sometime between September and November 2012, former federal prison guard Jeffery T. Jones accepted bribes of at least \$1,500 to smuggle over a quarter pound of marijuana and at least 10 cartons of cigarettes into FCC Petersburg. He pleaded guilty to receiving bribes and providing contraband on November 12, 2013. Two prisoners at the facility, Alvin Dewayne Hall and Patrick Gregory, also pleaded guilty to charges in connection with the smuggling scheme.

**Virginia:** Following an internal affairs investigation, a former Henrico County Sheriff’s Deputy was arrested on November 21, 2013 and charged with three felony counts of carnal knowledge of an inmate by an employee. Jennifer Ann Baran, 33, resigned from the sheriff’s department in May 2012, when the investigation began.

She is accused of having a sexual relationship with a prisoner at Henrico Jail West; the prisoner, who was not identified, was discovered with a cell phone that he then flushed down a toilet. A search of his cell revealed 25 handwritten love letters from Baran.

**Virginia:** Samah Yellardy died at the Powhatan Correctional Center on November 7, 2013. The prison did not notify his mother, who learned of her son’s death through posts from other prisoners’ families on Facebook. Janice Yellardy said several prisoners and even a guard who was on duty at the time her son died had contacted the family. “My son complained about his side, not his heart. It ain’t right. The warden told me he had a massive heart attack and I said no sir, my son did not have a heart attack. My son was 29 years old and had no medical problems.” She added, “They messed with the wrong one. If I have to fight until the day I die, I’m going to get justice for my son.”

**Washington:** On November 21, 2013, Sean Wright, 34, was charged with felony first-degree custodial sexual misconduct. The Snohomish County jail guard is accused of forcing a female prisoner to perform a sex act on him inside a broom

closet. The incident was discovered during an unrelated investigation that found Wright had let several other women have time out of their cells or other privileges if they allowed him to watch them shower or change clothes.

**Washington:** Facing embezzlement and possible harassment charges, a 16-year veteran jail guard, Sgt. Bruce Benscoter, resigned on September 30, 2013 after being on paid leave for several months. Benscoter, 43, was the subject of separate investigations into improper financial dealings as a director of the Wapato Youth Athletics League and for improper sexual conduct with a former prisoner while on duty at the Wapato City Jail. Benscoter allegedly threatened two prisoners who cooperated in an internal investigation into the sexual misconduct allegations. He was charged in the embezzlement case with second-degree theft and misappropriation and falsification of accounts by a public officer.

**West Virginia:** Jason Noel Squires, a former federal prison guard, and his girlfriend, Nikole Monique Watkins, were both sentenced on November 25, 2013. Squires and Watkins raked in approximately \$40,000 in cash payments from prisoners’ family members for tobacco that Squires

#### **MIDNIGHT EXPRESS BOOKS**

THE PREFERRED & ONLY FULL TIME  
company helping inmate authors  
publish books for 10+ years.  
PO Box 69, Dept PLN,  
Berryville, AR 72616  
Midnightexpressbooks.com  
Corrlinks: MEBooks1@yahoo.com

#### **FREE BOOK CATALOG & PRAYER CARD**

Send \$1 for S&H or  
SASE w/2 (two) US Forever Stamps  
Fiction, Nonfiction, Dictionary,  
Pastimes & Religious books  
English & Spanish.  
Jaguar Books, 6881 Stanton Ave #F  
Buena Park, CA 90621

#### **Education Behind Bars Newsletter**

Free electronic newsletter  
For prisoners viaCorrLinks.  
Add news@prisonlawblog.com  
to subscribe. The content  
is curated specifically  
for prisoners.

#### **SURROGATE SISTERS**

Celebrating 18+Years in Business  
No Games. We Sell Photos of Sexy  
Women, Gifts for Loved Ones,  
Erotic Stories & Pen-Pal Service  
Free Info & Flyer Send SASE to:  
Surrogate Sister – PN  
PO Box 95043, Las Vegas NV 89193

#### **Prisonerinmatefamilyservice.com**

Send a SASE for a free catalog;  
PO Box 1852, Pismo Beach, CA 93448  
We buy stamps- 7.50 a book;  
Single stamps .25 cents; Amazon  
Orders, copies of photos/artwork  
And SO much more!  
FamilyInmateSev@aol.com

#### **LOCAL PHONE NUMBERS \$2.50/MO.**

USA anywhere 5¢/min. To MX 15¢  
Great rates all over the world!  
No signup fee, no hidden fees!  
Refer new cust, 300 free mins!  
[www.FreedomLine.net](http://www.FreedomLine.net) to sign up  
or write FreedomLine, Box 7-WCB  
C’ville IN 47331. Save BIG \$\$\$!

#### **\*\*Bottle Thoughts Gift Store\*\***

Show someone you are thinking of  
them by sending a Special Gift  
Send SASE for FREE Brochure  
PO Box 110752, Carrollton, TX 75011  
Corrlinks:sales@bottlethoughts.com  
Contact us 1-877-705-0425  
FREE Shipping on All Gift Orders

#### **Celebrity Photos For Sale:**

Send self addressed stamped  
envelope for lists. Name stars  
you would like to order photos of.  
Start your collection today!  
Photoworld-PLN  
PO Box 401016  
Las Vegas, NV 89140

#### **How to get girls while in prison**


“The best techniques & methods to  
get more girls than u can handle  
even though u are locked up.”  
Send SASE for your free report:  
The Convict’s Education Group  
19141 Stone Oak Pkwy #104  
Dept.: A. San Antonio, TX 78258

smuggled into FCI Gilmer. Squires, 28, was sentenced to 18 months in prison and two years of supervised release, while Watkins, 24, received 12 months in prison and two years of supervised release.

**Wisconsin:** On October 22, 2013, criminal complaints were released by Racine County prosecutors that detailed allegations of sexual misconduct by two health care workers at the Racine Correctional Institution. Lisa M. Hawkins, 33,

and Karina Herrera, 40, were both charged with felony sexual assault by correctional staff; Hawkins faces an additional charge of obstructing an officer and Herrera faces another felony count of delivering illegal items to an inmate. The women are accused of performing sex acts on the same prisoner at different times in the bathroom of the Health Services Unit at the facility. Because Hawkins worked for a private medical contractor, her defense attorneys argued she was not a DOC employee and thus did not meet the definition of "correctional staff." Prosecutors disagreed, saying the statute

also applies to contractors.

**Wisconsin:** The Wisconsin Employment Relations Commission released data in November 2013 that indicated a prison guard union had failed to reach the required number of member votes to remain certified. Collective bargaining restrictions instituted by Governor Scott Walker require members of public employee unions to vote annually on whether they want the organization to continue to represent them. A union representing about 7,000 prison guards failed to meet the 51% majority vote needed to retain its certification. 

## Criminal Justice Resources

### **ACLU National Prison Project**

Handles state and federal conditions of confinement claims affecting large numbers of prisoners. Publishes the NPP Journal (available online at: [www.aclu.org/national-prison-project-journal-fall-2011](http://www.aclu.org/national-prison-project-journal-fall-2011)) and the Prisoners' Assistance Directory (write for more information). Contact: ACLU NPP, 915 15th St. NW, 7th Fl., Washington, DC 20005 (202) 393-4930. [www.aclu.org/prisons](http://www.aclu.org/prisons)

### **Amnesty International**

Compiles information about prisoner torture, beatings, rape, etc. to include in reports about U.S. prison conditions; also works on death penalty issues. Contact: Amnesty International, 5 Penn Plaza, New York NY 10001 (212) 807-8400. [www.amnestyusa.org](http://www.amnestyusa.org)

### **Center for Health Justice**

Formerly CorrectHELP. Provides information related to HIV in prison – contact them if you are not receiving proper HIV medication or are denied access to programs due to HIV status. Contact: CHJ, 900 Avila Street, Suite 102, Los Angeles, CA 90012. HIV Hotline: (214) 229-0979 (collect calls from prisoners OK). [www.centerforhealthjustice.org](http://www.centerforhealthjustice.org)

### **Centurion Ministries**

Works to exonerate the wrongfully convicted, in both cases involving DNA evidence and those that do not. Centurion only takes 1-2 new cases a year involving actual innocence. They do not consider accidental death or self-defense murder cases, he said/she said rape cases, or child abuse or child sex abuse cases unless there is physical evidence. All case inquiries must be from the prisoner involved, in writing. Contact: Centurion Ministries, 221 Witherspoon Street, Princeton, NJ 08542 (609) 921-0334. [www.centurionministries.org](http://www.centurionministries.org)

### **Critical Resistance**

Seeks to build an international movement to abolish the Prison Industrial Complex, with offices in Florida, California, New York, Texas and Louisiana. Publishes The Abolitionist newsletter. Contact: Critical Resistance, 1904 Franklin Street #504, Oakland, CA 94612 (510) 444-0484. [www.criticalresistance.org](http://www.criticalresistance.org)

### **The Exoneration Project**

The Exoneration Project is a non-profit organization dedicated to working to free prisoners who were wrongfully convicted. The Project represents innocent individuals in post-conviction legal proceedings; typical cases involve DNA testing, coerced confessions, police misconduct, the use of faulty evidence, junk science and faulty eyewitness testimony, and ineffective assistance of counsel claims. Contact: The Exoneration Project, 312 North May Street, Suite 100, Chicago, Illinois 60607 (312) 789-4955. [www.exonerationproject.org](http://www.exonerationproject.org)

### **Family & Corrections Network**

Primarily provides online resources for families of prisoners related to parenting, children of prisoners, prison visitation, mothers and fathers in prison, etc. Contact: F&CN, 93 Old York Road, Suite 1 #510, Jenkintown, PA 19046 (215) 576-1110. [www.fcnetwork.org](http://www.fcnetwork.org)

### **FAMM**

FAMM (Families Against Mandatory Minimums) publishes the FAMMgram three times a year, which includes information about injustices resulting from mandatory minimum laws with an emphasis on federal laws. Recommended donation of \$10 for a subscription. Contact: FAMM, 1612 K Street NW #700, Washington, DC 20006 (202) 822-6700). [www.famm.org](http://www.famm.org)

### **The Fortune Society**

Provides post-release services and programs for prisoners in the New York City area and occasionally publishes Fortune News, a free publication for prisoners that deals with criminal justice issues, primarily in New York. Contact: The Fortune Society, 29-76 Northern Blvd., Long Island City, NY 11101 (212) 691-7554. [www.fortunesociety.org](http://www.fortunesociety.org)

### **Innocence Project**

Provides advocacy for wrongly convicted prisoners whose cases involve DNA evidence and are at the post-conviction appeal stage. Maintains an online list of state-by-state innocence projects. Contact: Innocence Project, 40 Worth St., Suite 701, New York, NY 10013 (212) 364-5340. [www.innocenceproject.org](http://www.innocenceproject.org)

### **Just Detention International**

Formerly Stop Prisoner Rape, JDI seeks to end sexual violence against prisoners. Provides counseling resources for imprisoned and released rape survivors and activists for almost every state. Contact: JDI, 3325 Wilshire Blvd. #340, Los Angeles, CA 90010 (213) 384-1400. [www.justdetention.org](http://www.justdetention.org)

### **Justice Denied**

Although no longer publishing a print magazine, Justice Denied continues to provide the most comprehensive coverage of wrongful convictions and how and why they occur. Their content is available online, and includes all back issues of the Justice Denied magazine and a database of more than 3,000 wrongly convicted people. Contact: Justice Denied, P.O. Box 68911, Seattle, WA 98168 (206) 335-4254. [www.justicedenied.org](http://www.justicedenied.org)

### **National CURE**

Citizens United for Rehabilitation of Errants (CURE) is a national organization with state and special interest chapters that advocates for rehabilitative opportunities for prisoners and less reliance on incarceration. Publishes the CURE Newsletter. \$2 annual membership for prisoners. Contact: CURE, P.O. Box 2310, National Capitol Station, Washington, DC 20013 (202) 789-2126. [www.curenational.org](http://www.curenational.org)

### **November Coalition**

Publishes the Razor Wire, a bi-annual newsletter that reports on drug war-related issues, releasing prisoners of the drug war and restoring civil rights. A subscription is \$10 for prisoners and \$30 for non-prisoners. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 684-1550. [www.november.org](http://www.november.org)

### **Prison Activist Resource Center**

PARC is a prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, able-ism, heterosexism and classism, specifically within the Prison Industrial Complex. PARC produces a free resource directory for prisoners, and supports activists working to expose and end the abuses of the Prison Industrial Complex and mass incarceration. Contact: PARC, P.O. Box 70447, Oakland, CA 94612 (510) 893-4648. [www.prisonactivist.org](http://www.prisonactivist.org)

# Prison Legal News Book Store

Fill in the boxes next to each book you want to order, indicating the quantity and price. Enter the Total on the Order Form on the next page.  
**FREE SHIPPING on all book / index orders OVER \$50 (effective 4-1-2014 until further notice). \$6.00 S/H applies to all other book orders.**

## SUBSCRIBE TO PLN FOR 4 YEARS AND CHOOSE ONE BONUS!

1. SIX (6) FREE ISSUES FOR 54 TOTAL! OR
2. PRISON PROFITEERS (A \$24.95 VALUE!) OR
3. THE HABEAS CITEBOOK (A \$49.95 VALUE!)

**Prison Profiteers**, edited by Paul Wright and Tara Herivel, 323 pages. \$24.95. This is the third book in a series of Prison Legal News anthologies that examines the reality of mass imprisonment in America. *Prison Profiteers* is unique from other books because it exposes and discusses who profits and benefits from mass imprisonment, rather than who is harmed by it and how. 1063 ☐ ☐

**The Habeas Citebook: Ineffective Assistance of Counsel**, by Brandon Sample, PLN Publishing, 200 pages. \$49.95. This is PLN's second published book, written by federal prisoner Brandon Sample, which covers ineffective assistance of counsel issues in federal habeas petitions. Includes hundreds of case citations! 1078 ☐ ☐

**Prison Nation: The Warehousing of America's Poor**, edited by Tara Herivel and Paul Wright, 332 pages. \$35.95. PLN's second anthology exposes the dark side of the 'lock-em-up' political agenda and legal climate in the U.S. 1041 ☐ ☐

**The Ceiling of America, An Inside Look at the U.S. Prison Industry**, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. \$22.95. PLN's first anthology presents a detailed "inside" look at the workings of the American justice system. 1001 ☐ ☐

**Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada**, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, PLN Publishing, 221 pages. \$49.95. Written by Missouri prisoner Jon Marc Taylor, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, para-legal and college courses by mail. 1071 ☐ ☐

**The Criminal Law Handbook: Know Your Rights, Survive the System**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 608 pages. \$39.99. Explains what happens in a criminal case from being arrested to sentencing, and what your rights are at each stage of the process. Uses an easy to understand question-and-answer format. 1038 ☐ ☐

**Represent Yourself in Court: How to Prepare & Try a Winning Case**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 528 pages. \$39.99. Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. The authors explain what to say in court, how to say it, etc. 1037 ☐ ☐

**Law Dictionary**, Random House Webster's, 525 pages. \$19.95. Comprehensive up-to-date law dictionary explains more than 8,500 legal terms. Covers civil, criminal, commercial and international law. 1036 ☐ ☐

**The Blue Book of Grammar and Punctuation**, by Jane Straus, 110 pages. \$14.95. A guide to grammar and punctuation by an educator with experience teaching English to prisoners. 1046 ☐ ☐

**Legal Research: How to Find and Understand the Law**, by Stephen Elias and Susan Levinkind, 568 pages. \$49.99. Comprehensive and easy to understand guide on researching the law. Explains case law, statutes and digests, etc. Includes practice exercises. 1059 ☐ ☐

**Deposition Handbook**, by Paul Bergman and Albert Moore, Nolo Press, 352 pages. \$34.99. How-to handbook for anyone who conducts a deposition or is going to be deposed. 1054 ☐ ☐

**Criminal Law in a Nutshell**, by Arnold H. Loewy, 5th edition, 387 pages. \$43.95. Provides an overview of criminal law, including punishment, specific crimes, defenses & burden of proof. 1086 ☐ ☐

## SUBSCRIBE TO PLN FOR 3 YEARS AND CHOOSE ONE BONUS!

1. FOUR (4) FREE ISSUES FOR 40 TOTAL! OR
2. PROTECTING YOUR HEALTH AND SAFETY (A \$10.00 VALUE!)

**Protecting Your Health and Safety**, by Robert E. Toone, Southern Poverty Law Center, 325 pages. \$10.00. This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how to enforce your rights, including through litigation. 1060 ☐ ☐

**Spanish-English/English-Spanish Dictionary**, 2nd ed. Random House. \$15.95. Spanish-English and English-Spanish. 60,000+ entries from A to Z; includes Western Hemisphere usage. 1034a ☐ ☐

**Writing to Win: The Legal Writer**, by Steven D. Stark, Broadway Books/Random House, 283 pages. \$19.95. Explains the writing of effective complaints, responses, briefs, motions and other legal papers. 1035 ☐ ☐

**Actual Innocence: When Justice Goes Wrong and How to Make it Right**, updated paperback ed., by Barry Scheck, Peter Neufeld and Jim Dwyer, 403 pages. \$16.00. Describes how criminal defendants are wrongly convicted. Explains DNA testing and how it works to free the innocent. Devastating critique of police and prosecutorial misconduct. 1030 ☐ ☐

**Webster's English Dictionary**, Newly revised and updated, Random House. \$8.95. 75,000+ entries. Includes tips on writing and word usage, and has updated geographical and biographical entries. Includes recent business and computer terms. 1033 ☐ ☐

**Everyday Letters for Busy People**, by Debra Hart May, 287 pages. \$18.99. Hundreds of sample letters that can be adapted for most any purpose, including letters to government agencies and officials. Has numerous tips for writing effective letters. 1048 ☐ ☐

**Roget's Thesaurus**, 717 pages. \$8.95. Helps you find the right word for what you want to say. 11,000 words listed alphabetically with over 200,000 synonyms and antonyms. Sample sentences and parts of speech shown for every main word. Covers all levels of vocabulary and identifies informal and slang words. 1045 ☐ ☐

**Beyond Bars, Rejoining Society After Prison**, by Jeffrey Ian Ross, Ph.D. and Stephen C. Richards, Ph.D., Alpha, 240 pages. \$14.95. *Beyond Bars* is a practical and comprehensive guide for ex-convicts and their families for managing successful re-entry into the community, and includes information about budgets, job searches, family issues, preparing for release while still incarcerated, and more. 1080 ☐ ☐

**Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A.**, by Mumia Abu Jamal, City Lights Publishers, 280 pages. \$16.95. In *Jailhouse Lawyers*, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned-advocates who have learned to use the court system to represent other prisoners. 1073 ☐ ☐

**With Liberty for Some: 500 Years of Imprisonment in America**, by Scott Christianson, Northeastern University Press, 372 pages. \$18.95. The best overall history of the U.S. prison system from 1492 through the 20th century. A must-read for understanding how little things have changed in U.S. prisons over hundreds of years. 1026 ☐ ☐

**Complete GED Preparation**, by Steck-Vaughn, 922 pages. \$24.99. This useful handbook contains over 2,000 GED-style questions to thoroughly prepare students for taking the GED test. It offers complete coverage of the revised GED test with new testing information, instructions and a practice test. 1099 ☐ ☐

**\* ALL BOOKS SOLD BY PLN ARE SOFTCOVER / PAPERBACK \***

**Hepatitis and Liver Disease: What You Need to Know**, by Melissa Palmer, MD, 457 pages. **\$17.95.** Describes symptoms & treatments of hepatitis B & C and other liver diseases. Includes medications to avoid, what diet to follow and exercises to perform, plus a bibliography. 1031

**Arrested: What to Do When Your Loved One's in Jail**, by Wes Denham, 240 pages. **\$16.95.** Whether a defendant is charged with misdemeanor disorderly conduct or first-degree murder, this is an indispensable guide for those who want to support family members, partners or friends facing criminal charges. 1084

**Prisoners' Self-Help Litigation Manual**, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 960 pages. **\$39.95.** The premiere, must-have "Bible" of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Highly recommended! 1077

**How to Win Your Personal Injury Claim**, by Atty. Joseph Matthews, 7th edition, NOLO Press, 304 pages. **\$34.99.** While not specifically for prison-related personal injury cases, this book provides comprehensive information on how to handle personal injury and property damage claims arising from accidents. 1075

**Sue the Doctor and Win! Victim's Guide to Secrets of Malpractice Lawsuits**, by Lewis Laska, 336 pages. **\$39.95.** Written for victims of medical malpractice/neglect, to prepare for litigation. Note that this book addresses medical malpractice claims and issues in general, not specifically related to prisoners. 1079

**Advanced Criminal Procedure in a Nutshell**, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **\$43.95.** This text is designed for supplemental reading in an advanced criminal procedure course on the post-investigation processing of a criminal case, including prosecution and adjudication. 1090

**Our Bodies, Ourselves**, by The Boston Women's Health Book Collective, 944 pages. **\$26.00.** This book about women's health and sexuality has been called "America's best-selling book on all aspects of women's health," and is a great resource for women of all ages. 1082

**Arrest-Proof Yourself**, by Dale Carson and Wes Denham, 288 pages. **\$14.95.** This essential "how not to" guide written by an ex-cop explains how to act and what to say when confronted by the police to minimize the chances of being arrested and avoid additional charges. Includes information on basic tricks that police use to get people to incriminate themselves. 1083

**Nolo's Plain-English Law Dictionary**, by Gerald N. Hill and Kathleen T. Hill, 496 pages. **\$29.99.** Find terms you can use to understand and access the law. Contains 3,800 easy-to-read definitions for common (and not so common) legal terms. 3001

**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFave, 7th edition, 603 pages. **\$43.95.** Intended for use by law students, this is a succinct analysis of constitutional standards of major significance in the area of criminal procedure. 1085

**A Dictionary of Criminal Law Terms** (Black's Law Dictionary® Series), by Bryan A. Garner, 768 pages. **\$33.95.** This handbook contains police terms such as preventive detention and protective sweep, and phrases from judicial-created law such as independent-source rule and open-fields doctrine. A good resource to help navigate your way through the maze of legal language in criminal cases. 1088

**PLN Cumulative Index.** **\$22.50 each.** PLN Article Indexes provide detailed information about all PLN articles, including title, author, issue, page number, topics covered, citations, and if it is state, BOP or jail specific. Can be searched on over 500 subjects such as medical neglect or sexual assault. Circle the index(es) you are ordering: **1990-1995, 1996-1998, 1999-2001, 2002-2004** (more recent indexes not yet available)

### Subscription Rates

	1 year	2 years	3 years	4 years
<b>Prisoners</b>	<b>\$30</b>	<b>\$ 60</b>	<b>\$ 90</b>	<b>\$120</b>
<b>Individuals</b>	<b>\$35</b>	<b>\$ 70</b>	<b>\$105</b>	<b>\$140</b>
<b>Professionals</b>	<b>\$90</b>	<b>\$180</b>	<b>\$270</b>	<b>\$360</b>

(Attorneys, agencies, libraries)

### Subscription Bonuses

**2 years** - 2 bonus issues for 26 total issues  
**3 years** - 4 bonus issues (40 total) or a bonus book as listed on pg. 61  
**4 years** - 6 bonus issues (54 total) or a bonus book as listed on pg. 61

(All subscription rates and bonus offers are valid as of 4-1-2014)



Purchase with Visa, MasterCard, AmEx or Discover by phone: **561-360-2523**

Or buy books and subscriptions online: **www.prisonlegalnews.org**



### Mail Payment and Order to:

Prison Legal News  
P.O. Box 1151  
Lake Worth, FL 33460

All purchases must be pre-paid. Prisoners can pay with new first-class stamps (strips or books only, no single stamps) or pre-stamped envelopes, if allowed by institutional policies.

Please **Change my Address** to what is entered below ☐

### Mail Order To:

Name: \_\_\_\_\_  
 DOC #: \_\_\_\_\_  
 Suite/Cell: \_\_\_\_\_  
 Agency/Inst: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_

### Subscribe to Prison Legal News

**\$ Amount**

6 month subscription (prisoners only) - \$18 \_\_\_\_\_  
 1 yr subscription (12 issues) \_\_\_\_\_  
 2 yr subscription (2 bonus issues for 26 total!) \_\_\_\_\_  
 3 yr sub (write below which **FREE** book you want) \_\_\_\_\_  
     or 4 bonus issues for 40 issues total! \_\_\_\_\_  
 4 yr sub (write below which **FREE** book you want) \_\_\_\_\_  
     or 6 bonus issues for 54 issues total! \_\_\_\_\_  
 Single back issue or sample copy of PLN - \$5.00 each \_\_\_\_\_

### Books or Index Orders

(No S/H charge on 3 & 4-year sub free books OR book orders OVER \$50!) **Qty.**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
**Add \$6.00 S/H to BOOK ORDERS UNDER \$50** \_\_\_\_\_  
 (PLN subs do not count towards \$50 for free S/H for book orders)  
**FL residents ONLY add 6% to Total Book Cost** \_\_\_\_\_  
**Total Amount Enclosed:** \_\_\_\_\_

**\* NO REFUNDS on PLN subscription or book / index orders after orders have been placed. \***

**\* We are not responsible for incorrect addresses or address changes after orders have been placed. \***



~ THE SENZA COLLECTION ~

SENZA SPECIALIZES IN PROVIDING YOU SEVERAL CHOICES  
ALL NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY – OR – NON NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY  
WE HAVE DIVIDED OUR CATALOGS INTO THESE CATEGORIES:

**CAUCASIAN/AFRICAN-AMERICAN/HISPANIC/ASIAN/MIXED HOTTIES**

EACH PAGE OF OUR CATALOGS HAS 99 GLORIOUSLY SEDUCTIVE LADIES POSING JUST FOR YOUR ENJOYMENT.

OVER 250 CATALOGS TO COLLECT AT JUST \$2.50 PER CATALOG

HERE'S A LITTLE FREEBIE FROM SENZA TO YOU!!!

ORDER YOUR FREE SENZA "99 HOTTIES" SAMPLE CATALOG

JUST SEND US TWO U.S. FOREVER OR FIRST CLASS STAMPS AND A SELF ADDRESSED STAMPED ENVELOPE TO:

**SENZA**

FREE CATALOG OFFER

**P.O. BOX 5840**

**BALTIMORE, MD 21282**

**AND FOR THOSE THAT JUST CANNOT WAIT...TAKE ADVANTAGE OF THIS LIMITED TIME OFFER**

**SENZA'S INTRODUCTORY SPECIAL \*\*\*DIRTY DOZEN\*\*\***

\$19.99 GETS YOU ALL THIS + FREE SHIPPING AND HANDLING

12 EYE POPPING CATALOGS! EACH CATALOG HAS 99 PICS TO CHOOSE FROM ON EACH PAGE

PLUS

12 4X6 PRINTS FROM OUR MIXED HOTTIES SELECTION TO SHOW OFF SENZA'S 4X6'S PRINT QUALITY.

**ALL FOR JUST \$19.99**

**REMEMBER YOU MUST: SPECIFY NUDE OR NON-NUDE ON YOUR ORDER**

**SPECIFY YOUR INSTITUTIONS RESTRICTIONS AS TO THE NUMBER OF PRINTS ALLOWED IN ONE ENVELOPE.**

**SENZA CORPORATE POLICIES – PLEASE REVIEW THEM CAREFULLY**

**ALL SENZA COLLECTION IMAGES ARE SOLD AT A FLAT PRICE OF 0.35 CENTS EACH.**

ANYONE WISHING TO PURCHASE 1000 + PRINTS AT ONE TIME WILL BE GIVEN A FLAT PRICE OF 0.30 CENTS PER IMAGE.

**SENZA HAS A MINIMUM ORDER REQUIREMENT OF: \$15.00 THIS DOESN'T INCLUDE S&H CHARGES.**

**SHIPPING AND HANDLING CHARGES ARE AS FOLLOWS:**

**1 – 5 4x6 PRINTS – \$1.00 PER ENVELOPE / 6 – 15 4x6 PRINTS – \$1.50 PER ENVELOPE / 16 – 25 4x6 PRINTS – \$2.00 PER ENVELOPE**

YOU MUST NOTIFY SENZA ON THE ORDER FORM, THE MAXIMUM NUMBER OF PRINTS YOUR INSTITUTION WILL PERMIT IN EACH ENVELOPE

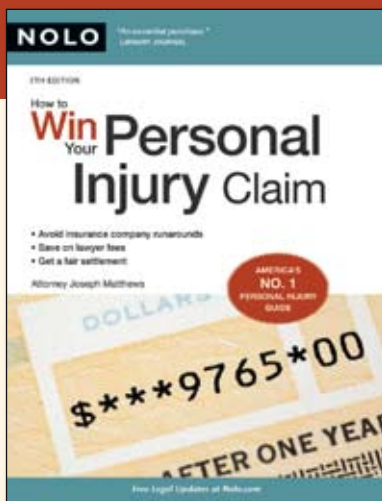
**SENZA WILL ACCEPT U.S. FIRST CLASS POSTAGE STAMPS AT THE RATE OF \$5.00 FOR EACH BRAND NEW FLAT BOOK OF 20 STAMPS.**

YOU ARE REQUIRED TO KNOW YOUR INSTITUTIONS POLICIES REGARDING WHAT IMAGES ARE ACCEPTABLE INTO YOUR FACILITY INSTITUTION. THERE ARE NO EXCEPTIONS TO THIS POLICY. RETURNED/REJECTED MAIL – YOU WILL HAVE 15 BUSINESS DAYS TO SEND US A SASE WITH A STREET ADDRESS IN WHICH TO MAIL YOUR RETURNED/REJECTED PRINTS.

AFTER 15 DAYS THE PRINTS ARE RETURNED TO OUR INVENTORY.

ALL SALES ARE FINAL/NO REFUNDS OR EXCHANGES

## Great Self-Help Book Deals From Prison Legal News!



**Order from Prison Legal News**

Add \$6 shipping for orders under \$50

**Prison Legal News**

**PO Box 1151**

**Lake Worth, FL 33460**

**Phone: 561-360-2523**

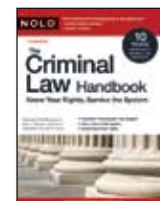
**www.prisonlegalnews.org**

### How to Win Your Personal Injury Claim

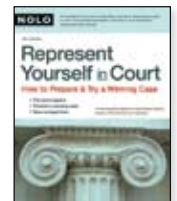
\$34.99

*How to Win Your Personal Injury Claim* shows you how to handle almost every accident situation, and guides you through the insurance claim process, step by step. Learn how to:

- protect your rights after an accident
- determine what your claim is worth
- handle a property-damage claim
- deal with uncooperative doctors, lawyers and insurance companies
- counter the special tactics insurance companies use
- prepare a claim for compensation
- negotiate a full and fair settlement
- stay on top of your case if you hire a lawyer



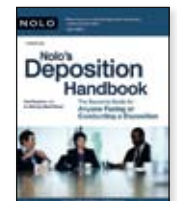
The Criminal Law Handbook  
\$39.99



Represent Yourself in Court  
\$39.99



Legal Research  
\$49.99



Nolo's Deposition Handbook  
\$34.99

**NOLO  
YOUR LEGAL COMPANION**





## Prison Legal News

PO Box 1151  
Lake Worth FL 33460

Change Service Requested

Non-Profit Org.  
U.S. Postage  
PAID  
Portland OR  
Permit No. 3142

### Subscription Renewal

Subscriptions expire after the issue shown on the label is mailed. For example, if the label says: EXPIRES 02/2015, then the subscription expires after the February 2015 issue is mailed. Please renew at least 2 months before the expiration date. IF THE LABEL SAYS **EXPIRES: 07/2014** THIS IS YOUR LAST ISSUE. Please renew immediately to avoid missing any issues.

### Change of Address

If you move or are transferred, please notify PLN as soon as possible so your issues can be mailed to your new address! PLN only accepts responsibility for sending an issue to the address provided at the time an issue is mailed!



# PRISONLEGALNEWS.org

Dedicated to Protecting Human Rights

>>FREE Data Search |

Decisions

Investigations

Audits

Publications

Cases

Verdicts

Settlements

**If you need to know about prisons and jails or are litigating a detention facility case, you can't afford not to subscribe to our website!**

**Online subscribers get unlimited, 24-hour a day access to the website and its content!**

 **Sign up for PLN's FREE listserv to receive prison and jail news and court rulings by e-mail.**

- ▶ PLN's website offers all issues of PLN in both searchable database and PDF formats. Issues are indexed and posted as soon as they go to press.
- ▶ Publications section has numerous downloadable government reports, audits and investigations from around the country.
- ▶ Full text decisions of thousands of court cases, published and unpublished.
- ▶ All content is easy to print for downloading and mailing to prisoners.
- ▶ Most complete collection of prison and jail related verdicts and settlements anywhere.
- ▶ Order books, print subscriptions and make donations on line.

- ▶ Brief bank with a wide assortment of winning motions, briefs, complaints and settlements.
- ▶ Links to thousands of prison, jail, criminal justice and legal websites around the world.
- ▶ Thousands of articles and cases, all fully indexed by more than 500 subjects, searchable by case name, case year, state of origin, court, author, location, case outcome, PLN issue and key word search.
- ▶ Search free, pay only if you find it!
- ▶ The highest quality, most comprehensive prison litigation news and research site in the world.

**Affordable rates to meet your budget  
\$19.95 per month • \$149.95 per year**

**Subscribe to Prison Legal News Online! <http://www.prisonlegalnews.org>**



## Unfair Punishment

by Sam Levin

### Part One: Victim Discrimination

*A state program that's supposed to help crime victims denies people who have had run-ins with the law or are afraid of being victimized again.*

THE FRONT DOOR WAS WIDE OPEN WHEN police arrived at the home of Samantha Rogers at 3:21 a.m. on February 23, 2010. Inside the Stockton, California apartment, Rogers was alone, sitting on the kitchen table, wiping her face with a towel. The television was overturned and there was blood smeared across the living room carpet and walls.

Rogers didn't think she needed to go to the hospital. "I was like, 'There's nothing wrong with me. I'm okay,'" Rogers, now 46,

recalled. "They could see I was in shock."

Rogers was not okay. Her whole face was swollen, she had a large cut under her eye and her nose was broken, according to a Stockton Police Department report and Rogers' own recollection of the incident. Earlier that night, she and her boyfriend of three years had invited friends over to play cards and dominoes at their shared home. At one point, the couple got in an argument about money, and Rogers' boyfriend started getting violent. The guests "decided to leave before things escalated," the police report stated. On their way out, the friends could hear Rogers screaming for help, but they did not call police. Eventually, a neighbor did. By then, Rogers' boyfriend had dragged her on the floor and punched and kicked her in the face and head multiple times, the report said.

When cops arrived, the boyfriend was already gone – and he had taken her wallet and credit card with him.

Police immediately called in medics, who tried to convince Rogers that she needed to go to the emergency room. "They were like, 'Ms. Rogers, you don't understand how bad you're messed up. We can see, because we're looking at you,'" she recalled. Finally, they found a pocket mirror in her bedroom and handed it to her.

"I just started crying," she said. "My face was unrecognizable."

At St. Joseph's Medical Center, doctors told her she needed five sets of stitches, but that was not the only bad news she received. Soon after, she learned that the California Victim Compensation Program, which provides financial assistance to victims of violence, would not give her a dime of support. At the time, Rogers was on felony parole, which automatically disqualified her from receiving any aid from the state. She had been released from state prison a year

earlier after more than seventeen years in and out of the criminal justice system for a range of nonviolent, victimless crimes, mostly tied to drug offenses and her battle with substance abuse. Rogers said that when she was attacked in 2010, she still had roughly eight more months left on parole. That meant the state would not help her with one of her most pressing needs – moving away from her home in Stockton where her ex-boyfriend could find her.

Just a few weeks after Rogers went to the hospital, an official from the San Joaquin County District Attorney's Office informed her of the state's Victim Compensation rules. "They said there's nothing they could possibly do to help me in any way," she said. "I had to keep my cool. But in actuality I was outraged. I was like, fucking for real? Parole is stopping me from getting the support I need? Just because I'm on parole or ... had something to do with another crime that makes me less qualified to get help?"

"That makes me feel like I'm less human," Rogers continued, noting that finding a new place to live away from her violent ex-boyfriend was critical to her safety. "I feared that if he came back, he might want to finish me off."

Over the past year, Victim Compensation, a state program that reimburses victims for a range of expenses like hospital bills, relocation and mental health services, has come under increased scrutiny for its discriminatory practices. In December 2013, critics won a victory when the board that oversees the program voted to allow sex workers to access aid; the now-defunct regulation had stated that a victim's involvement in "prostitution" leading up to the act of violence barred her or him from receiving compensation. A sex worker who spoke

## INSIDE

From the Editor	16
PLN Settles WI Jail Lawsuit	17
Qui Tam Suits: An Overview	18
Abuses in Georgia Prisons	22
Federal Drug Sentence Reductions	26
Texas Prison Industries Profiled	28
MI ACLU Legal Mail Injunction	30
Heat-related Deaths in Texas Prisons	36
WA Jail "Peep Show" Lawsuit	40
Execution Drugs Challenged in PA	44
Mug Shot Website Extortion	48
Racial Bias in WA Jury Selection	51
News in Brief	56

## **DON'T LET THE TIME DO YOU. STAY CONNECTED!**

**Guaranteed savings of up to 90%** on your long distance, out-of-state, and international calls from Federal prisons, county jails and State prisons.

### **Best Rates and Plans**

Multi-number Friends & Family Package for as little as \$10.00/month

More plans & more numbers than any operator -

### **No Hidden Fees**

**What We Say Is What You Pay** – NO additional “fees”, “charges” or “surcharges”

International calls are billed only on call acceptance. No bogus rounding

### **No Contracts, No Penalties, No Hassles**

No long term commitments – Service is always month – to – month. Cancel at anytime with NO penalties and NO cancellation fees with just a phone call or an e-mail.

### **Fast and EZ Setup**

We **ALWAYS** have numbers and can set up instantaneously online or on the phone.

## **Special Commitment, Civil Detention & Halfway House**

\$0.40 connection charge from payphones  
lowest in the business

Voice Mail and Call Recording options

Call, write, e-mail or have your loved ones check out our website for more information.

SP Telecom  
1220 Broadway - # 801-A  
New York, NY 10001  
[www.inmatefone.com](http://www.inmatefone.com)  
e-mail: [clients@inmatefone.com](mailto:clients@inmatefone.com)  
Español: [soporte@inmatefone.com](mailto:soporte@inmatefone.com)  
Call: 1(845)326-5300 (Collect calls are NOT accepted)  
Español: 1(845)342-8110 (Llamadas por cobrar no se aceptan)

Some restrictions apply. Plan availability depends on the Institution

## **NO PERMITA QUE EL TIEMPO LE SEPARE DE SU FAMILIA!**

**Garantizamos ahorros de hasta el 90%** en sus llamadas de larga distancia, entre estados, y en las llamadas internacionales desde prisiones federales, estatales y locales.

### **Los mejores Planes y Tarifas**

Plan para familias y amigos con varios números por tan solo \$10.00/ mes .

Más planes y números que ningún otro operador .

### **No hay letra pequeña**

**Lo Que Ves Es Lo Que Pagas**, NO hay ningún otro cargo extra.

Las llamadas internacionales solo se facturan cuando es aceptada por el familiar al otro lado del hilo telefónico.

**No hay contrato , permanencia ni ningún tipo de trabas .**

El servicio siempre se ofrece en base a un mes de duración pudiendo renovar el mismo todo los meses sin ningún cargo por la terminación del servicio y lo puede solicitar con una simple llamada de teléfono o con un correo electrónico (E-MAIL)

**La solicitud se puede hacer rápida y muy fácil .**

Nosotros siempre tenemos números y podemos procesar el registro inmediatamente en línea o por teléfono.

**Detenidos civiles en cárceles especiales y reclusos en camino a casas de medio camino le ofrecemos los siguientes servicios.**

\$0.40 de recargo desde teléfonos de prepago, la tarifa más baja en el sector .

Buzón de Voz y la posibilidad de grabar las llamadas .





# Prison Legal News

*a publication of the  
Human Rights Defense Center*  
[www.humanrightsdefensecenter.org](http://www.humanrightsdefensecenter.org)

## EDITOR

Paul Wright

## MANAGING EDITOR

Alex Friedmann

## COLUMNISTS

Michael Cohen, Kent Russell,

Mumia Abu Jamal

## CONTRIBUTING WRITERS

Matthew Clarke, John Dannenberg,

Derek Gilna, Gary Hunter,

David Reutter, Mark Wilson,

Joe Watson, Christopher Zoukis

## RESEARCH ASSOCIATE

Mari Garcia

## ADVERTISING DIRECTOR

Susan Schwartzkopf

## LAYOUT

Lansing Scott

## HRDC LITIGATION PROJECT

Lance Weber—General Counsel

Robert Jack—Staff Attorney

Sabarish Neelakanta—Staff Attorney

## PLN is a monthly publication.

A one year subscription is \$30 for prisoners, \$35 for individuals, and \$90 for lawyers and institutions. Prisoner donations of less than \$30 will be pro-rated at \$3.00/issue. Do not send less than \$18.00 at a time. All foreign subscriptions are \$100 sent via airmail. PLN accepts Visa and Mastercard orders by phone. New subscribers please allow four to six weeks for the delivery of your first issue. Confirmation of receipt of donations cannot be made without an SASE. PLN is a section 501 (c)(3) non-profit organization. Donations are tax deductible. Send contributions to:

**Prison Legal News**

**PO Box 1151**

**Lake Worth, FL 33460**

**561-360-2523**

**[info@prisonlegalnews.org](mailto:info@prisonlegalnews.org)**

**[www.prisonlegalnews.org](http://www.prisonlegalnews.org)**

PLN reports on legal cases and news stories related to prisoner rights and prison conditions of confinement. PLN welcomes all news clippings, legal summaries and leads on people to contact related to those issues.

Article submissions should be sent to - The Editor - at the above address. We cannot return submissions without an SASE. Check our website or send an SASE for writer guidelines.

Advertising offers are void where prohibited by law and constitutional detention facility rules.

PLN is indexed by the *Alternative Press Index*, *Criminal Justice Periodicals Index* and the *Department of Justice Index*.

## Unfair Punishment (cont.)

out about being brutally attacked and then subsequently denied aid sparked the debate. While social justice advocates celebrated that change – which is still in the process of being finalized and implemented – other activists, especially prisoners' rights groups, continue to lament the other inequities written into state law. Namely, formerly incarcerated people who become victims of violence are barred from receiving any financial assistance while on felony parole and probation. And in California, that includes people convicted of nonviolent drug offenses.

It's not uncommon for low-income people who get caught up in the criminal justice system to become victims of violence themselves. In this way, the program's exclusion of people with criminal records punishes some of the most vulnerable victims – those struggling to rehabilitate their lives after incarceration and who already have little to no support. They often can't find a safe place to live, a steady job, or enough money to survive. In these challenging circumstances, people reentering society can get caught up in gun violence and abusive relationships. And when they do, the state's denial of aid can send them on a downward spiral and, advocates argue, revictimize them.

But this isn't the only group that the program refuses to help. The state also generally rejects applicants who don't cooperate with police, which can be an obstacle for victims of domestic violence who are trapped in dangerous situations and afraid to talk with cops. And for victims caught up in gang activity, cooperating with law enforcement can be fatal – in some cases even exposing family members and friends to retaliation and violence. Program officials say they consider these kinds of risks, but advocates say unfair denials due to lack of cooperation are common. And as these victims work to protect themselves and their loved ones, the lack of basic financial aid can dramatically hinder their ability to recover from a violent episode.

Critics of the program, which is primarily supported by fines criminal offenders are ordered to pay when they are convicted, also argue that the state has more than enough cash to aid victims it currently excludes: In fiscal year 2012-13, California

officials reported a program fund "reserve" of nearly \$80 million.

"The fact that categories of people are barred from any type of compensation exposes such deep problems with the way in which the fund is administered," said Diana Block, an advisory board member of the California Coalition for Women Prisoners.

Rogers today still struggles to understand why a victimless, nonviolent crime in her past – one for which she already served time behind bars – prevented her from getting the basic help she needed. "You keep saying you want me to get rehabilitated.... But where do we get some healing?"

\* \* \*

AS A VICTIM OF DOMESTIC VIOLENCE WITH medical bills, a damaged home and a perpetrator on the loose, Rogers was just the kind of candidate the state is supposed to help. When it was formed in 1965, the Victim Compensation Program was the first of its kind in the nation solely dedicated to providing financial aid to those who have faced violence. The program is a "provider of last resort," explained Jon Myers, deputy executive officer of public affairs and outreach for the Victim Compensation and Government Claims Board. "We help victims who really don't have anywhere else to turn to." That means the state program can help with crime-related expenses not covered by other sources, such as private insurance or Medi-Cal. (It can cover co-pays, for example).

The program supports victims of domestic violence, child abuse, sexual assault, drunk driving accidents, robbery and hate crimes, among others. It also offers aid to the families of homicide victims and people legally dependent on victims for financial support. (It does not support victims of nonviolent offenses, like financial crimes). Victim Compensation can help with a wide range of expenses, including medical and dental treatment, mental health services, income loss, funeral and burial expenses, home security, relocation and crime-scene cleanup. "We see it as a big relief to victims in helping them overcome the trauma of a violent crime," said Myers, noting that expenses can quickly add up and overwhelm victims.

In fiscal year 2012-13, the state approved 41,470 claims, representing 78 percent of the total applications it received, said Anne Gordon, spokesperson for Vic-

## Unfair Punishment (cont.)

tim Compensation. The state denied 11,649 people – 22 percent of total applications. (Those figures do not factor in whether a denied claim was appealed and subsequently approved). On average, the board receives two hundred applications per workday and approves 40,000 to 50,000 per year. In fiscal year 2012-13, the program paid nearly \$62 million to victims in total, which averages about \$1,500 per approved applicant.

“That’s a lot of services and a lot of people that we are helping,” Myers said. Since its inception, the program has provided victims with more than \$2.2 billion in total assistance.

Victims can apply through county Victim Witness Assistance Centers or through the state, and generally must do so within three years of the crime being committed. The state sets financial limits for different categories, such as a \$63,000 cap on medical reimbursements and a \$5,000 maximum for funeral and burial costs.

There are also a series of factors that render an applicant ineligible. In general, people who “knowingly and willingly participated in or were involved in the events leading to the crime” and victims who do

not cooperate with law enforcement don’t qualify for any reimbursements.

Furthermore, as was the case with Rogers, a person who is convicted of a felony may not be granted compensation until that person has been discharged from probation or parole. Probation is administered by counties and parole is run by the state and involves people convicted of felonies released from prison. Gordon said that individuals on felony probation or parole are not automatically denied and that their claims can gain initial approval, but they cannot collect any assistance until they are off probation or parole. And even at that time, expenses incurred while on probation and parole can’t be retroactively covered.

In short, the program is inaccessible to people recently convicted of felonies. In California, that’s a large group. As of January 2014, the California Department of Corrections and Rehabilitation had 47,525 parolees assigned to its adult parole operations division. The length of probation differs by county. In Alameda County, the standard period for felonies is five years, and the county probation department supervises approximately 13,000 people at a given time. A majority of them have been convicted of felonies. There are 58 counties in the state. And there are hundreds

of non-serious, low-level offenses that are classified as felonies.

“Simply put, it’s just not fair,” said Alameda County Public Defender Brendon Woods. “I don’t honestly understand the rationale as to why the victim of a crime who is on probation or parole is not entitled to the same compensation as someone who’s not.”

The policy “uniquely disadvantages people from underserved communities,” added Kimberly Horiuchi, an attorney with the ACLU of Northern California, arguing that it’s wrong for the state to make judgments about who is worthy and who is not. “Victims are victims. Rape is rape.”

Gordon said her office has no data on the number of felony parolees and probationers who seek compensation. She said the most common reasons for denial include an incomplete application, a submission outside of the required filing period or from someone out-of-state, a request from a victim of a non-violent crime, and an applicant having participated in the crime or refused to cooperate with police.

But some victims may not even fill out an application once they learn the program is not available to them. “They already know the door is slammed in their face,” said Ida McCray, director of Families With A Future, an organization affiliated with the San Francisco-based nonprofit Legal Services for Prisoners with Children. “We get the message. It’s ‘we don’t give a fuck about y’all.’ We are used to the wounds.”

The policy limiting this fund to a certain class of people also serves to reinforce deep prejudices against those with criminal records. “It perpetuates the lie that someone’s humanity ends once they get a conviction,” said Eliza Hersh, director of

**inmateMAGS**.com  
formerly MyMagstore.com

Buy 1200 **SINGLE** Copies of Magazines • 1200 **Subscriptions** • **VIP Service**  
**1800 Newspapers** • Payment with **Stamps** • **Prepaid Accounts**  
Send \$3 or 10 Stamps for **50+ Page Full Catalog** (\$3 Discount Coupon Included)

**InmateMAGS.com**  
4208 University Way NE  
Seattle, WA 98105

**www.inmateMAGS.com**  
Info@inmateMAGS.com  
206-322-6397

# FREE JAIL CALLS

Get A Free, Guaranteed ConsCallHome Number &  
20 Minutes Of Free Talk Time Every Month.



**Call: 855-232-2012**



**www.FreeJailCalls.com**



the Clean Slate Practice at the East Bay Community Law Center. "People who suffer are people who suffer regardless of their supervision status or past mistakes."

For those rejected, a denial is not simply a financial inconvenience. Rogers, who is now a program assistant for the California Coalition for Women Prisoners, which is based in San Francisco, was unable to find a new place to live after her boyfriend beat her savagely in 2010. Even though she got an emergency restraining order against him, he repeatedly harassed her by phone after the incident, seemingly trying to convince her not to press charges, she said. Rogers' apartment was also in a complex where her boyfriend's family lived, giving them an opportunity to keep tabs on her activities and report back to her estranged partner, she added.

"He knows everywhere I go," she said. Rogers wanted to move to Sacramento or Los Angeles where she had family. And Victim Compensation offers up to \$2,000 for relocation, which could have helped her pay for transportation, first month's rent and a security deposit. "I would've had that opportunity to relocate and get a fresh new start," she said.

Without the financial aid, Rogers stayed in Stockton, started using drugs again, and by April 2010, just two months after the incident, was living on the streets.

\* \* \*

THE EXCLUSION OF PEOPLE ON PAROLE AND probation appears to be rooted in a belief that people who commit crimes cannot then become victims, too. Notably, the statute outlining Victim Compensation eligibility states that people who have been convicted of a felony should be considered a lower

priority than non-felons. Wayne Strumpfer, chief counsel of the Victim Compensation and Government Claims Board, said this part of the law currently has no practical application, and that once off parole and probation, applicants with felonies on their records are treated the same as others. Still, the language reflects an ingrained bias against people with criminal records – a fact that today can play out in ways beyond the ban on parolees and probationers.

Ruben Leal was shot on October 11, 2010 in East Oakland. Leal, then 22 years old, suffered a collapsed lung and fractured shinbone and temporarily had to use a wheelchair. Two days after the shooting, his life got a lot worse. On October 13, 2010, the City of Oakland held a press conference announcing that it was seeking an injunction against 42 alleged members of the Fruitvale "criminal street gang" known as the Norteños. Leal, who was born and raised in Oakland and had been taking classes at Laney College at the time, was named as one of the gang members. The Oakland City Attorney's Office, with support from the Oakland Police Department, was seeking a civil restraining order that

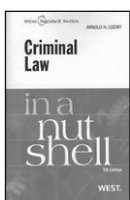
would restrict the activity of the named defendants. Leal said he was not involved with the gang at the time of the injunction.

"Me being shot was used as evidence for the gang injunction," said Leal, who is now 25 and works as an outreach coordinator with Communities United for Restorative Youth Justice. As part of the injunction, OPD officer Douglass Keely filed a declaration outlining each defendant's criminal history and evidence of gang ties. Summarizing Leal's involvement, Keely noted that the East Oakland resident had been injured in a drive-by incident in which as many as twelve rounds were fired. The report also listed Leal's criminal history – all minor incidents that OPD said tied him to the Norteños gang. (The report mentioned a "pending" felony case, but prosecutors eventually dropped those charges against Leal).

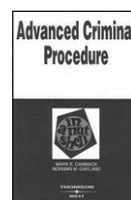
After the shooting, the officer who showed up at his home to talk to him about the incident was Keely, Leal recalled. "This is the same guy that wants to put this gang injunction on me. This guy wants to talk to me?"

His attorneys advised against it. "It was

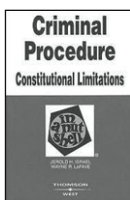
## New Titles Available in PLN's Bookstore



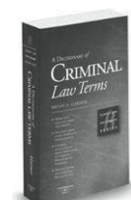
**Criminal Law in a Nutshell**, by Arnold H. Loewy, 5th edition, 387 pages. **\$43.95**



**Advanced Criminal Procedure in a Nutshell**, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **\$43.95**



**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFare, 7th edition, 603 pages. **\$43.95**



**A Dictionary of Criminal Law Terms (Black's Law Dictionary® Series)**, by Bryan A. Garner, 768 pages. **\$33.95**

### SMITH'S GUIDE to HABEAS CORPUS RELIEF for State Prisoners under 28 U.S.C. §2254

Example pleadings from the initial habeas corpus petition to the final petition for a writ of certiorari. Let Smith guide you step-by-step through the federal courts with confidence. 380 pages.

\$24.95 + \$6.95 shipping & handling. In CA add \$2.18 sales tax. Sent via USPS media mail. Money orders, personal or institutional checks ONLY. Send \$31.90 (In CA, \$34.08) payable to Roberts Company.

Send name, address, prisoner #, and payment to: Roberts Company, 15412 Electronic Lane #101, Huntington Beach, CA 92649. Also available on Amazon.com.

- ☐ Criminal Law in a Nutshell ☐ Advanced Criminal Procedures in a Nutshell ☐ Criminal Procedure  
☐ Dictionary of Criminal Law Terms

Amount enclosed (add \$6 S&H for orders under \$50; free shipping over \$50) \_\_\_\_\_

By ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**PRISON LEGAL NEWS**

PO Box 1151 • Lake Worth, FL 33460  
Tel [561] 360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)



## Unfair Punishment (cont.)

a conflict of interest,” said Leal. “I would’ve talked with any cop and tell them my story, but not ... Keely.”

Michael Siegel, one of the lawyers who represented alleged gang members in the case, said that police searched and raided the homes of those named in the injunction soon after it was filed. When Keely arrived at the home of Leal, it wasn’t even clear if he was there to talk about the recent shooting or simply to advance OPD’s gang injunction case against him in court, Siegel said. “It was an incredibly unjust situation. Keely is providing direct evidence against Ruben. It was definitely not in [Leal’s] interest ... to have communications with him.”

Siegel further noted that, at the time, Leal “was not an active gang member. He was making a positive impact on his community.”

Leal’s medical bills related to the shooting, however, had started to pile up, to more than \$100,000 total at the time. He applied for Victim Compensation to cover some of the costs, which he could not afford. Within about a month, he got a notice of rejection, citing the fact that he did not cooperate with police.

“I felt like I was being revictimized,” said Leal. “I felt like I didn’t have no support from nobody.”

He and his attorneys appealed the denial, but never heard back, according to Leal and Siegel. They said they also tried to make it clear to OPD that Leal would be willing to talk to a different cop. OPD spokesperson Frank Bonifacio noted that Victim Compensation approves claims – not police departments. Keely declined to comment on Leal’s case, but said that, in general, a victim can have his attorney present when talking to police and in some cases can give a statement to a different officer if there is a concern about a specific investigator. But it is crucial that victims cooperate, he said: “The most important thing for us is to solve the case any way possible.”

Regardless, Leal did not get the financial support California typically provides to victims of gun violence, which was a significant obstacle to his physical and psychological recovery.

“The folks that have suffered this trauma – they should invest in these people. This is not rocket science,” said Leal. “If you don’t help them overcome that traumatic experience, they’re going to find a way, and the way they find is not going to be healthy for them or for others.... The way they are going to feel better is reproducing that trauma onto someone else.”

In other words, the cycle of violence continues. And the pain lingers. After the shooting, Leal suffered several serious panic attacks. “He had hurt in his eyes and in his spirit,” said George Galvis, executive direc-

tor of Communities United for Restorative Youth Justice, recalling his first time meeting Leal, shortly after the shooting. “He looked wounded.”

Leal said he has made significant progress since the incident. Still, he added, “Some of those scars are never going to heal.”

\* \* \*

THE VICTIM COMPENSATION PROGRAM’S rejection of Leal is a relatively common occurrence, according to some Alameda County activists. People caught up in street violence often have had past interactions with law enforcement, which can become an obstacle to receiving the aid they need to recover. Leal said he could think of about ten people he knows who have been denied, even some who cooperated with police despite the risks associated with snitching. The only time he has heard of approvals were for families of homicide victims seeking coverage for funeral expenses.

Victim Compensation also bars access for those involved in the events leading up to the crime, including “mutual combat,” “illegal drug-related activity” and “gang involvement.” The program’s regulations state that gang membership alone is not a disqualifying factor, but several advocates who help victims navigate the application process said it seems that way in practice.

“If you’re wearing any particular color that a police officer might deem is gang

## Simple Business Consulting Prisoner Outreach Services

SIMPLE BROCHURE - SIMPLE PRICING  
FAST PROFESSIONAL SERVICE  
YOU CAN SET UP A SERVICE ACCOUNT  
FLAT FEES OR RETAINER FOR TERM PROJECTS

### FINANCIAL REQUIREMENTS

NO BANK ACCOUNT  
NO MINIMUM BALANCE  
NO MONTHLY FEE  
NO MEMBERSHIP FEE  
NO APPLICATION

PUBLISHING - VIRTUAL OFFICE - GRAPHIC DESIGN - MARKETING - BUSINESS

### Make a change today!

Do you have an idea, dream, goal or plan you have been wanting to develop? What are you waiting for?



Send SASE for our brochure....  
It is that  
**SIMPLE!**

SIMPLE BUSINESS CONSULTING  
3308 ROUTE 940 - SUITE 104-304  
MOUNT POCONO, PA 18344  
WWW.SIMPLEBUSINESSCONSULTING.COM

## PENACON.COM

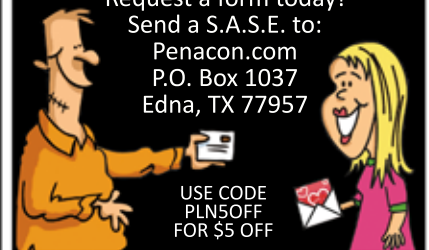
Helping the incarcerated community gain connections around the world!

Post your profile on an easy to navigate website for millions of viewers to see. Gain new penpals and look forward to receiving mail!

One Year Ad Only \$35  
Until Release Date Ad \$95

### Request a form today!

Send a S.A.S.E. to:  
Penacon.com  
P.O. Box 1037  
Edna, TX 77957



USE CODE  
PLN5OFF  
FOR \$5 OFF



related, then that's something ... that can get you denied," said Linnea Ashley, training and advocacy manager of the National Network of Hospital-based Violence Intervention Programs. Ashley is based in Oakland at the offices of Youth ALIVE!, a nonprofit and a founding member of the network.

Erroneous statements in police reports can also disqualify victims from receiving compensation, said Rafael Vasquez, lead hospital intervention specialist with Youth ALIVE!'s Caught in the Crossfire program. That program offers case management for victims, often starting at hospitals immediately after a shooting. Part of that work involves helping them navigate the Victim Compensation process. Vasquez recalled one case of a young teenager who was shot in the head and survived – but was denied compensation because of a belt found at the crime scene that cops said indicated his gang involvement. In actuality, Vasquez said, the belt didn't even belong to the victim, who was not a gang member; rather, the crime simply occurred in an area with regular gang violence.

In these kinds of cases, people are

essentially rejected because of where they live, a form of victim-blaming, said Kyndra Simmons, Caught in the Crossfire program manager. "You went into an area where you know there's criminal activity. It's almost as if you put yourself in that situation. But that's where they can afford to live."

Youth ALIVE! sometimes reaches out to police, requesting that they amend or clarify statements so that a victim is not incorrectly declared responsible for the crime. From there, the organization appeals the compensation denials, a process that can be successful. But not all victims have these advocates. In addition to these more nuanced obstacles at Youth ALIVE!, around 20 to 30 percent of the victims that the organization supports are on parole and probation.

"The system that is currently in place views victims and perpetrators in a very simplistic way," said Nicole Lee, founding executive director of Urban Peace Movement, an anti-violence group in Oakland. "You're either a victim or a perpetrator and you can't be both. The reality is ... violence is a cycle. And as a society, we have to find policies that disrupt the cycle."

For a variety of reasons, domestic violence victims can also be very reluctant to file charges or cooperate with police, but that doesn't mean they aren't deserving of aid, said McCray, who works as a domestic violence counselor at S.F. Bay Counseling and Education. "When they try to separate, that's the most dangerous time," she said of people who attempt to get away from their abusive partners. McCray also noted that domestic violence survivors face risks when reporting their partners to cops. Plus, she said, "women often times stay in domestic violence situations because of their children. They are the glue of the family."

Deep distrust of law enforcement can also motivate their lack of cooperation, said McCray, who works with formerly incarcerated people as the director of the Women's Resource Center, which is affiliated with the San Francisco Sheriff's Department. "There's a cultural stigma behind talking to cops, because these communities have already been oppressed ... and targeted by police forces." And the Victim Compensation denials sting, she said. "It keeps them depressed. It keeps them angry.... And it's just so fucking petty."

## Stamps for **CASH!**

*Great Goods will buy your stamps!*

**70%** of Face Value: Complete books or sheets of Forever Stamps

**65%** of Face Value: Complete books, sheets, or rolls of 45-cent stamps

**60%** of Face Value: Complete books or sheets of high denomination stamps above 45-cent

**Payment sent within 24 hours of receipt.**

**W**E WILL SEND your funds as a money order, electronic payment to anywhere you designate. Great Goods can also send payment to an approved package vendor. Please provide complete name and address of where to send your funds. Also include any required forms or special instructions.

Minimum money order of \$20. • No quantity of stamps too big. • No taped or stapled stamps. • Used, damaged, torn stamps not accepted and cannot be returned. • Stamps **MUST** be on original postal backing. • Only new stamps accepted.

• No singles or partials will be accepted and they cannot be returned.

## GREAT GOODS

PO Box 399, West Chesterfield NH 03466

[www.greatgoods.org](http://www.greatgoods.org)

STAMPS © USPS. ALL RIGHTS RESERVED.

## Unfair Punishment (cont.)

Strumpfer, the Victim Compensation chief counsel, said that the program has limitations in place for "public safety purposes." If a victim is refusing to talk to police and withholding information, then the state cannot support that individual by offering benefits, he said.

"The burden is on us to show a lack of cooperation," he said, noting that there are exceptions to the rule and that Victim Compensation would consider the risks a victim faces in talking to law enforcement. The state cannot aid victims who break the law or irresponsibly put themselves in harm's way prior to the incident, he continued. Strumpfer cited examples of a burglar who is shot during the act or an individual actively enticing someone to fight at a bar.

Ken Ryken, head of the Alameda County District Attorney's restitution unit, explained it this way: "If a person is engaged in criminal activity that's dangerous, they assumed that risk.... The state shouldn't have to bear that cost."

In cases of domestic violence, state law states that victims should not be rejected solely because they did not file a police report and that the program should consider other evidence such as medical records or the existence of a restraining order. But victims can still be denied compensation if they refuse to testify, request that the suspect not be prosecuted, or decline to "completely and truthfully" respond to a request for

information "in a timely manner."

Regarding the question of gang involvement, Strumpfer said that the state reviews applications on a case-by-case basis and only rejects requests when it finds involvement in the crime in question. "It's not just a throwaway line in the police report."

Asked why the state does not compensate felony parolees and probationers, he responded that this policy has been written into law for a long time and that it is "just another condition of being on probation or parole." And it's not necessarily about saving the state money, Myers noted: "It's more of a policy decision, not a financial decision."

Strumpfer pointed out that the program is funded by offenders through restitution fees, which are the mandatory fines required of all adults convicted of misdemeanors and felonies in the state. "If you're a criminal offender, you're paying into the program," Strumpfer said. "You may very well likely owe restitution."

Critics reject this notion, arguing that people forced to financially support this fund should not be disqualified from accessing it when they are in need. (Prisoners' rights groups also strongly oppose the restitution fines on a more fundamental level, due to the fact that the fees can become insurmountable debts for people reentering society after incarceration).

Because discrimination against people on felony parole and probation is written into law, expanded access would require legislative action. I asked Strumpfer if last

year's debate around sex workers' rights had sparked further evaluation within the program about its ongoing exclusionary practices, including the exclusion of people convicted of nonviolent crimes, like drug offenses. He replied: "The [program's] board members have not showed any signs of wanting to review anything else."

\* \* \*

WHEN THE VICTIM COMPENSATION program is a dead end, people recovering from violence must look elsewhere for support. And advocacy organizations all too familiar with the state's denials have focused on alternative ways to support victims, while recognizing that financial aid can only go so far anyway.

Communities United for Restorative Youth Justice sometimes leads "healing ceremonies," for example, which give victims and family members a meaningful opportunity to grieve and reflect, said Galvis, the executive director. "It's about how we restore balance and restore that spirit for people who have suffered from trauma," he said. "There's strength and healing in letting those tears flow."

Leal said it made a huge difference when advocates like Galvis reached out to him. "These different community members came out and supported me on their own dime just because they wanted to.... That helped me with my healing journey."

Communities United also organizes fundraisers for victims, Galvis said. This can be critical when families don't get adequate



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription! Quarterly drawing WINS \$100! (Void in New York) (Last Quarter's winner from Somers, CT.)

**TELL YOUR FRIENDS! ACT NOW!!**

PO Box 2063 • Fort Walton Beach FL. 32549  
[www.InmateMagazineService.com](http://www.InmateMagazineService.com)



## Inmate Magazine Service

compensation from the state.

As for Samantha Rogers, she was homeless for several months in 2010 after the state refused to help her relocate. She ended up at a rescue mission and eventually received significant counseling, which helped her get back on her feet. But it took time. And Victim Compensation could have put her on a very different path, she said. "If they could've supported me back then, there's no telling where I could've been four years later."

Rogers has been off of parole for more than three years and now gets to spend more time with her four children, daughters ages 30 and 25 and sons ages 22 and 20. Today, she regularly speaks at events and marches in rallies advocating for the rights of incarcerated people.

### Part Two: Sentenced to Poverty

*The state often traps formerly incarcerated people – even those convicted of low-level offenses – with insurmountable debts.*

WHEN CHLOE TURNER WAS IN STATE prison, her family sent her money on a few occasions. It wasn't much, but it was more than her fellow prisoners – many of whom were serving life sentences – received, since they often went years without getting any mail at all. So she was grateful for the contact. And even a tiny amount of cash helped.

"It's really hard because you're put in a position where the only freedom you really have is once a month you can do some

shopping," explained Turner, a 35-year-old East Bay resident who spent most of her twenties in and out of jail and prison for various drug-related offenses.

In prison, "shopping" means purchasing basic necessities from the commissary, such as soap, deodorant and snacks. And without financial support from loved ones, most prisoners are forced to rely on low-paying prison jobs to make money. Turner cleaned toilets. She also briefly worked in the kitchen, but spent a majority of her time doing janitorial jobs – mopping floors, picking up trash and cleaning bathrooms. She made roughly seventeen cents an hour. California state prisoners can earn a maximum of 37 cents an hour.

With these kinds of measly wages, many prisoners just don't have enough money to buy the basic items they need. Moreover, much of the money they earn or receive from family members is confiscated by the California Department of Corrections and Rehabilitation. The department automatically seizes half of the income that most prisoners earn, as well as half of the money deposited into their prison bank accounts by family members. The state collects this money to pay off a prisoner's restitution fines, which are the financial penalties that all people convicted of crimes in the state are ordered to pay upon sentencing. It is the criminal offender's so-called "debt to society," a punishment in addition to being sent to prison or jail or put on probation.

Along with exacerbating the financial

hardships placed on prisoners, the confiscation of a family member's gift can be emotionally upsetting, given the symbolic value this support can carry. "Your money is being taken and you're not able to buy the stuff you need – you are completely helpless," said Turner, noting that she eventually told her family to stop sending cash altogether.

And when Turner was released from prison in 2008, the burden of restitution was far from over. Her debts from a series of convictions added up and quickly became insurmountable, dragging her down as she struggled to turn her life around and move beyond her criminal past. Six years later, she still owes more than \$10,000 in unpaid restitution fines and is unsure when she will ever be able to pay it off. Turner has a full-time job, helping women reenter society after prison as a program coordinator with Community Works West, a nonprofit affiliated with the Women's Resource Center at the San Francisco Sheriff's Department. But even though she has a job, it doesn't pay well enough for her to live in the pricey Bay Area and make a significant dent in her debt at the same time. "I can't get my life together because I owe all this money," she said. "I'm just trying to live."

In California, restitution fines support the Victim Compensation program, a state fund that provides financial aid to many victims of violent crime, helping them with a wide range of expenses, such as medical bills, mental health services and crime scene cleanup. The program has faced a backlash

## LAW OFFICE OF BENJAMIN RAMOS

705 E Bidwell, Suite 2-359  
Folsom, CA 95630  
916-358-9842

EXPERIENCED HABEAS CORPUS PRACTITIONER,  
ADMITTED IN ALL CALIFORNIA STATE AND FEDERAL COURTS

[www.lawofficeofbenjaminramos.com](http://www.lawofficeofbenjaminramos.com)

- 28 Successful Habeas Corpus Petitions Against the BPH/Governor/CDCR
- Numerous successful appeals in criminal cases in California State Courts
- Representation in *Federal Court* on § 2255 Motions and Federal Appeals
- Parole Hearing Representation since 2000, appointed to more than 700 parole cases; numerous private parole hearing clients; successful law practice since 1991.
- Writs Challenging Parole Denial/Governor Reversal
- Writs Challenging Bogus Gang Validation Decisions
- Writs to Enforce Broken Plea Agreements

## Unfair Punishment (cont.)

over the last year because it denies certain victims the right to collect compensation.

But the institutionalized discrimination against certain victims is not the only reason that prisoners' rights advocates contend that California's Victim Compensation program is broken. Activists also lament the fact that the program, on a fundamental level, is funded on the backs of low-income people trying to rehabilitate their lives after incarceration. The money for victims supported by the program does not come from taxpayers, but rather from all adults convicted of felonies and misdemeanors in California, including people who commit drug crimes and other nonviolent, victimless offenses.

"The whole way in which the fund is set up puts the burden on a group of people ... that really have no money and are sucked into a debtor situation," said Diana Block, a founding member of the California Coalition for Women Prisoners.

Critics further argue that, from a financial standpoint, there's no reason the

fines levied on people convicted of crimes in California have to be so steep in the first place. In fiscal year 2012-13, state officials reported a restitution fund "reserve" of nearly \$80 million.

In addition, there's evidence that the financial penalties levied by judges are simply too large for most people to afford. Data from the Department of Corrections shows that most people sentenced to state prison have been unable to pay off their restitution debts.

As is the case with Turner, the financial burdens of restitution can stay with people for years, creating yet another barrier to rehabilitation post-incarceration – one that can make it hard to secure a job, go back to school or even keep up with rent. In this way, the state traps people in poverty, shackling them to the prison system after they've left it.

\* \* \*

RUBEN LEAL KNOWS FIRSTHAND HOW THE state's Victim Compensation system can intensify the suffering of those already in pain. As described in Part One, after Leal was shot in a drive-by incident in 2010, the state refused to offer him any aid due to his alleged failure to cooperate with police. The East Oakland resident is also intimately familiar with the burden that the state's restitution system can place on families trying to help their loved ones behind bars. Leal's brother has been in prison since 2004, and every time his mother sends his brother money, the department takes its 50 percent cut.

"All these people, mostly from low-income families, are paying into this fund – and they're the same people that don't qualify [to receive victim compensation],"

said Leal, who works as an outreach coordinator with Communities United for Restorative Youth Justice, a local nonprofit. "People think that money is coming from taxpayers, which it's not. Folks are paying into that fund with restitution. I feel like the whole system is flawed." Even as the state seizes half the money his mother sends him, Leal's brother will very likely have large unpaid debts upon his release.

In addition to the misconception that Victim Compensation is a taxpayer-supported program, the role of restitution in the California criminal justice system is also widely misunderstood. While some assume that restitution simply means offenders paying victims for specific damages, in reality it's more complex.

There are two main forms of restitution in the state: One is the "direct order" that offenders must pay to a victim. This is a financial penalty that a person convicted of a crime must pay directly to the victim to repay the losses he or she suffered. The other type is the restitution "fine" – the offender's mandatory "debt to society." Judges order these fines at sentencing for every misdemeanor and felony offense, and these payments go to the state, making up the majority of revenue of the "Restitution Fund."

It is from this pool of money, which has generally remained static in recent years, that the state compensates victims of violence – beyond what they receive directly from the person convicted of the crime. The Victim Compensation program also gets some federal dollars from restitution fines paid by people convicted in federal court. Governor Jerry Brown's fiscal year 2013-14 budget calls for Victim Compensation to spend \$75 million of the fund on victims, but there is no cap, meaning victims are never rejected due to the financial limits of the fund.

"These are rights at a constitutional level, which means they are no less important than a defendant's right to counsel," said Ken Ryken, head of the Alameda County District Attorney's restitution unit. He was referring to California's Victims' Bill of Rights, which first passed in 1982 and was amended in 2008. This amendment to the state constitution outlines a victim's right to restitution, noting that people who suffer losses as a result of criminal activity have a right to seek and secure restitution from offenders – and that restitution shall

### WINNING HABEAS CORPUS & POST CONVICTION RELIEF Revised 4th Ed. 2012

Main subject: Ineffective Assistance of Counsel "IAC"

Atty Kent Russel writes: "Simply the best source for a quick study on major subjects in the criminal process."

◊ A virtual law library in a book, major constructional issues

◊ 6th Amendment & IAC, Duty to investigate

◊ Forensics, Plea IAC, Jury Instructions

◊ §2254 & 2255 Procedure, Clearly established law

### POST CONVICTION RELIEF FOR WASH. STATE- Personal Restraint Petition

The only book for Wash. State prisoners who seek collateral review by PRP or CrR 7.8 motion. Covers all aspects of preparing a PRP, time bar, facial invalidity, Plea bargain, sentencing, incl. case law & rules.

ORDER: (price incl. tax, plus \$&H)

[ ] Winning Habeas Corpus... \$ 59.50

[ ] Post Conviction Relief for Wash. \$ 49.50

[ ] Both Books \$ 95.00

To: FAST LAW PUBLISHING

Box 577, Upland CA 91785 On-line [www.fastlaw.org](http://www.fastlaw.org)

## Pen Pals for Prisoners

Your ad on the Internet worldwide:

One year for \$9.95. Mail name &

address for FREE order form or online:

[www.PrisonerPal.com](http://www.PrisonerPal.com)

PO Box 19689

Houston, TX 77224



be ordered from convicted wrongdoers in every case in which a victim suffers a loss.

When it comes to “direct orders,” there is little dispute that convicted offenders should be held financially responsible for the losses their victims incur as a result of the crime. The additional mandatory restitution fines, however, are controversial.

Ryken said that restitution fines make it possible to help victims with serious and costly needs. If a victim has hundreds of thousands of dollars in medical bills, for example, it’s likely that an offender, who may be serving a long prison sentence, would not be able to cover the expenses. The state can then draw from the Restitution Fund and reimburse the victim in a timely manner, which also ensures that the victim does not have an ongoing debtor relationship with the offender over time. In these scenarios, the offender is then in debt to the state, not the victim. “It’s really a smart idea at the state level,” Ryken said.

In California, the statutory restitution fine amounts have steadily increased in recent years. For misdemeanor fines, the minimum amount a judge can order, as of 2014, is \$150, up from \$100 in 2011;

the maximum is \$1,000. For felonies, the minimum fine is now \$300, up from \$200 in 2011; the maximum is \$10,000. These fines are entirely separate from orders offenders may be paying to their victims. Payment of restitution fees is mandatory; the debt cannot be eliminated through bankruptcy.

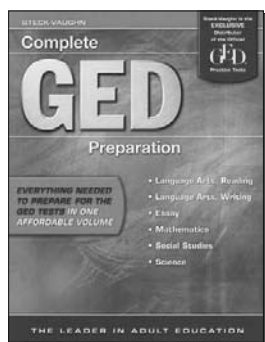
“When I look at the victim restitution fund, what I see is a hostage relationship,” said Dorsey Nunn, executive director of Legal Services for Prisoners with Children. “We’re taxing the family members of incarcerated people by seizing money that they send their loved one.... They’re demanding ransom.”

Nunn said he never spent the ten dollars his daughter sent him while he was incarcerated, because it meant so much to him on a personal level. And having the state take half of a family member’s gift is incredibly painful for any prisoner, he said. Advocates also noted that losing a significant cut of already-paltry prison wages can be very frustrating. According to the Department of Corrections, wages for low-level jobs can pay as little as eight cents per hour. After the restitution payment, that’s four pennies.

“People don’t understand how much people have to pay for their own upkeep and survival in prison,” said Block, of the Coalition for Women Prisoners, citing the need to purchase basic toiletry items. “All the things that help you make it through, you have to pay for them. They are not given to you. And the only way you can pay for them is whatever small amount of money you can make ... or if you have families or friends who want to help support you.”

In a way, these criticisms bolster one of the policy arguments in favor of the restitution system, supporters say. Ryken pointed to case law that advocates for the ordering of full restitution in every case, regardless of the offender’s ability to pay. “It’s something the state wants the defendant to bear fully to appreciate the weight of their conduct and the full extent of their conduct,” he said. Restitution fines, he added, support “rehabilitation of the offender, making them fully responsible for their conduct, and deterring future misconduct. If the penalty or burden is large enough, it will cause the defendant from recidivating – from doing it again.”

But for some people with criminal



### **Complete GED Preparation** [Paperback]

Publisher: Steck-Vaughn; 2nd edition  
928 pages; \$24.99; Item #: 1099

Over 2,000 GED-style questions thoroughly prepare learners for test day. This single book offers thorough coverage of the revised GED Test with new test information, instruction, practice, and practice tests. Answer key included.

Order from: **Prison Legal News**  
(Add \$6 shipping for orders under \$50)

**PO Box 1151**  
**Lake Worth, FL 33460**  
**Phone: (561) 360-2523**  
**www.prisonlegalnews.org**

## **SUBSCRIPTION MADNESS 2014**

Our Subscription Madness promotion has been so successful in the past that we have decided to offer it again!

PLN is offering a discount on blocks of 2 or 4 one-year subscriptions for any person not a current or former subscriber who has a US address, whether they are imprisoned or not. Subscription Madness is the only opportunity attorneys, librarians and corrections professionals have to receive a PLN subscription at a fraction of the normal rate of \$90 per year, and for prisoner family members and concerned activists to subscribe at a steep discount from the normal rate of \$35 per year. Prisoner subscriptions are also less than the normal \$30 per year. Check out these discounts!

- **\$50 buys 2 one-year subscriptions (\$25 each)**
- **\$80 buys 4 one-year subscriptions (\$20 each)**

If you want to take advantage of Subscription Madness but are stumped for people to send them to, PLN can provide names of indigent prisoners who would love a PLN subscription. Use a separate piece of paper to order by mail, call our office to order with a credit card, or go to our website to order online. **No Renewals!** Sorry, but Subscription Madness is for new one-year subscriptions only, and cannot be used to renew or extend a current or former subscription. PLN is a 501(c)(3) non-profit. (Subscription Madness 2014 expires 12-31-2014).

**Prison Legal News, PO Box 1151, Lake Worth, FL 33460**  
**561-360-2523; www.prisonlegalnews.org**

## Unfair Punishment (cont.)

records, restitution can have the opposite effect.

\* \* \*

ONE DAY IN THE SUMMER OF 2011, De'Mario Lewis almost gave up. The 24-year-old West Oakland resident was trying to provide for his son, who was then six months old, but he could not find any work. At the time, Lewis had an unpaid restitution fine from a recent misdemeanor case. With the lingering debt, he could not clear his legal record, a fact that prevented him from getting a job. And without a job, he couldn't pay off what he owed.

"What do we do? How do we make some money? Do we sit up here with a change cup?" Lewis said. "Or shit, do we hire ourselves and buy a bundle of crack cocaine and go sell it? That'd be the easiest route."

Lewis remembered the day that he seriously considered making money selling drugs. At that very moment, he said, his baby boy stared up at him and poked his face with his tiny hand, temporarily blinding him. "He grabbed me between my eyes with his two fingers," he said. "I looked at him, but I couldn't see him."

It was a powerful sign, he continued. "God showed me that if I go out there and do that, I'll never see my son again. That was my breaking point."

Inspired by his son, Lewis chose not to sell drugs. But his internal battle

underscores the contradictions of the restitution system. While some argue that these financial punishments are designed to discourage people from reoffending, in practice they can make it very challenging for debtors to stay out of trouble. Lewis' struggle also highlights the way restitution can punish people who commit relatively minor crimes.

He was charged with illegal possession of a firearm in September 2009. After fighting the charge for months, in February of 2010, he was ordered to spend 45 days in county jail. When he was released he had nearly \$800 to pay off in restitution.

"I was just so furious because I was like, 'I really want to get my life back right,'" said Lewis. "I had this restitution hanging over my neck. It's bullshit. It's unfair."

This catch-22 is just one of many ways in which fines can become obstacles after incarceration, drowning people in debt and trapping them in poverty.

When he was released from custody, Lewis initially started paying \$50 a month, but even those small payments proved challenging. With an unpaid restitution debt he couldn't clear his criminal record, and thus was not eligible to get the license he needed to get a job as a security guard. Meanwhile, he was trying to prepare for the birth of his first child, who was born in January 2011. He eventually landed a temporary, part-time job with Oakland Rising, a local nonprofit, but still could not pay off his debts for months.

"I can work towards something better in my life, but when you have certain limitations on you, you have to settle for less," he said.

As he started raising his son, Lewis stopped paying restitution regularly.

At the same time he managed to stay out of trouble. Last fall, he finally received some good news – he was offered a job as a teaching assistant. But he would not be able to start until he cleared his criminal record, which meant he had to pay his restitution

in full. So with support from local advocacy groups United Roots Oakland, Urban Peace Movement and Urban Strategies Council, Lewis finally paid off his restitution debt in December 2013. He's in the process of getting his record cleared and hopes to start teaching full-time soon. In the meantime, he has been working part-time as a ticket-taker at the Coliseum. "I'm back to being normal again," he said.

But Lewis still struggles to understand why the system sets people up for failure. "People make mistakes ... but they do want to change their lives," he said, adding, "if you're paying restitution, I feel like you should be paying restitution to a victim ... people who got robbed or brutally beat up. That's what restitution is for."

While restitution made it difficult for Lewis to get a job, it can have more severe consequences for people convicted of serious crimes.

"Absolutely, victims have a right to restitution to be made whole," said Alameda County Public Defender Brendon Woods. "The flipside is that one mistake by your client can essentially ruin their lives, and when you have those clients who have taken every step to get back on the right track – they've completed probation, they've stayed out of trouble, they've done what they're supposed to do – and they have this huge financial obligation, it makes it very hard for them to move forward."

At the state level, parole agents and officials with the Victim Compensation program refer formerly incarcerated people with unpaid restitution debts to the state Franchise Tax Board, which assumes responsibility for collection. The mechanisms are different for each county, but often involve private collection agencies that go after those in debt. These entities function in a similar manner to credit card companies in pursuit of debtors.

"Like any commercial practice, their compensation depends on how successful they are, so they may be fairly aggressive," said Ryken of the Alameda County District Attorney's Office. (Alameda County does not contract with private companies for this service and is one of two counties in California with a dedicated restitution court that oversees the collection process).

Debt collectors may intercept income tax refunds, withhold wages from paychecks and even take money directly from an individual's bank account. In some cases, fees

### CALIFORNIA LIFER NEWSLETTER

**Published by Life Support Alliance**

CLN: Comprehensive newsletter mailed every 8 weeks containing state and federal cases, parole board news, statistics, legislation and articles of interest to Lifers and their supporters.

#### CLN SUBSCRIPTIONS

Prisoners .... \$30 per year (or 100 stamps)  
Others .... \$90 per year

**Make checks payable to LSAEF**

(Life Support Alliance Education Fund)

**CLN, P.O. Box 277, Rancho Cordova, CA. 95741**

*CLN no longer provides copy service of legal cases, articles or news and materials from the Internet.*

[www.lifesupportalliance.org](http://www.lifesupportalliance.org) (916) 402-3750



and premiums may add to a person's debt. The state can also place a lien on inheritances. Meanwhile, debt can severely damage an individual's credit, prevent people from getting a driver's license and block an otherwise eligible person from clearing his or her record of misdemeanor convictions.

For some people with criminal records, the combined impact of these consequences can make it impossible to live a normal life – even years after incarceration.

\* \* \*

THE AMOUNT OF TIME IT TAKES CRIMINAL offenders to pay their restitution fees varies tremendously and cannot be tracked, according to Anne Gordon, a spokesperson for the Victim Compensation and Government Claims Board. It can range from a few months to years, she said.

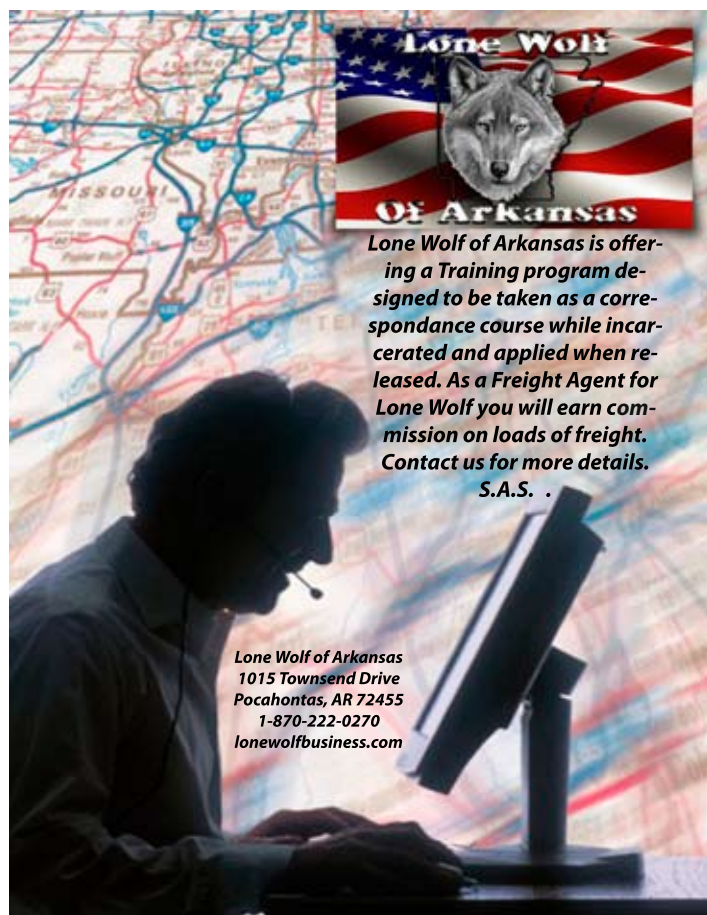
Data on the amount of fines ordered versus the amount of fines collected, however, sheds some light on people's inability to pay. In California, from 1992 to 2013, judges levied \$812 million in restitution fines against criminal defendants who were sent to state prison, according to statistics provided by Dana Simas, spokesperson for

the California Department of Corrections and Rehabilitation. During that same time period, the state collected only about \$190 million, or 23 percent of the total. And the collection rate for restitution direct orders, which are supposed to be paid by criminal offenders directly to their victims, was even lower for people who were sentenced to state prison: Of the more than \$3 billion in fines levied during that period, the state has collected the equivalent of about 2 percent.

Teeoni and Keyuna Newsom have learned the hard way how the restitution system traps people in debt. The two women met about five years ago shortly after they were both released from state prison, and they have been partners ever since. They got married last July and now live in Richmond where they're raising their twelve-year-old daughter. Teeoni, 36, works full-time as the young men's case manager at Commu-

nity Works West, the nonprofit organization affiliated with the San Francisco Sheriff's Department. Keyuna, 33, works as a part-time administrative assistant for Resolve to Stop the Violence, a program of Community Works.

Teeoni said she was once a gang member in Southern California and spent roughly seventeen years behind bars for a range of crimes, including robbery, carjacking, assault and more. Teeoni has "two strikes" on her record under California's Three Strikes Law, meaning she could get a life sentence if she were convicted of another serious felony. Keyuna spent about two years in prison for possession and grand theft in a case that she said



**Lone Wolf of Arkansas**

*Lone Wolf of Arkansas is offering a Training program designed to be taken as a correspondence course while incarcerated and applied when released. As a Freight Agent for Lone Wolf you will earn commission on loads of freight. Contact us for more details. S.A.S. .*

**Lone Wolf of Arkansas**  
1015 Townsend Drive  
Pocahontas, AR 72455  
1-870-222-0270  
lonewolfbusiness.com



**PRISONER ASSISTANT**  
REHABILITATION AND REENTRY PLANNING

**Join Our Exclusive Membership, Open a Bank Account and Gain Access to Our Services!**  
We provide full services to our membership clients. **MEMBERS ONLY**

**A Bank Account under your social security number is the only way to build a positive banking history.**  
Deposits, Statements, Money Orders, Bank Checks, Stamp Exchange, Wire Transfers, Direct Deposit & PayPal.

**Prisoner Concierge**  
Internet Purchases, Gift Cards, Current Events, People Search, Personal Shopper and much more. "If It Can Be Done, We Will Try To Do It" Order our catalog for more details.

We can do any Graphic Design project. Printed Material, Musical Emails, Creative Writing, Photo Reproduction & Forwarding, Book Publishing, Book Cover Design, Press Releases, Portfolio Creation, and Website Design.

**Virtual Office**  
Mailboxes, Emails, Texts, Scanning, Copies, Typing, Storage, Document Preparation, Internet Research, Prepaid, Contract & Computer Aided Phones.

Place your profile on [prisonerassistant.com](http://prisonerassistant.com) and access our Special Features; Classifieds, Portfolios, Posts & Blogs, Market Place and Sponsor a Prisoner.

PO Box 704-AD1  
Lake Harmony, PA 18624-0704  
[www.prisonerassistant.com](http://www.prisonerassistant.com)  
[info@prisonerassistant.com](mailto:info@prisonerassistant.com)  
(570) 722-5800

For more information - send \$4.50 to "Prisoner Assistant" for an Application Package and 80 page color catalog. If you send an SASE you will only receive a brochure.

**JOIN NOW!**

**Business Development** **Credit Development**

**The services below are available to all prisoners - not just our clients**

**Send an SASE for our On Demand Brochure**

**Prisoner Assistant now offers select services to all prisoners No Membership Necessary!**

**On Demand Services**

**Banking and Financial Management Course**  
120 pages, complete course with 8 chapters and exams. Transcript and Certificate available. Send \$30.00 to Prisoner Assistant at the address above with a request for the course. Open to Everyone.

**Personal Reentry Guide and Journal**  
233 pages, complete course with 7 chapters and exams. Transcript and Certificate available. Send \$35.00 to Prisoner Assistant at the address above with a request for the course. Open to Everyone.

## Unfair Punishment (cont.)

involved an undercover cop (and thus no actual victim). Through a series of programs and job opportunities, the two have turned themselves around and are now focused on rebuilding their lives together and raising a family. By all measures, their criminal histories are behind them – except for their restitution fines.

When Teeoni was first released in 2009, she had an initial debt of roughly \$3,000, which the state began collecting

by taking a 10-percent cut from every paycheck. Then one day in 2010, collectors confiscated roughly \$4,000 directly from the joint bank account she shares with Keyuna, who also had thousands of dollars to pay off. At the time, they weren't even sure whose unpaid fines led to the sweep. But their account was wiped clean – seemingly out of nowhere.

"They took all of it, like every single bit that was in the bank account," recalled Teeoni, noting that they only realized what had happened when their checks started bouncing. "What is the point of me having a job if you're going to take all of my money?"

"I was devastated," added Keyuna. "We had a nice chunk of change saved up ... and they took everything."

And it didn't end there. In January of this year, Teeoni had \$316 more taken out of her paycheck, and learned that debt collectors intend to start taking a whopping 25 percent of her income. These deductions apparently will continue until she pays off a \$2,000 debt, separate from the fines she first paid upon her release.

Teeoni said the lost income is already a significant strain on her family. "I can't not feed everybody," she said. "I could lose my house. I could lose my car. Am I going to lose everything that I've been working for all this time? Because I came out here to change everything and it's like, as soon as I changed, you decided, 'you know what? Here, pay this.'"

Teeoni said she understands the importance of taking responsibility for her past actions, but noted that she has served her time and has already paid thousands of dollars. The lingering fines seem meaningless and unbeatable to her. "Should I just quit my job and go back to what I was doing and then they can't find me?"

Teeoni said she would never break the law again, but noted that, as a case manager, she regularly sees clients who, in the face of unpaid fines, start selling drugs or disappear altogether.

One woman with large restitution fines, who requested anonymity in order to protect her future job prospects, recalled through tears a time when she had to choose between paying for her cap and gown for her post-graduate ceremony at UC Berkeley and paying her next restitution fee. Another woman, a San Francisco mother of four, also requested anonymity due to the fact that she has temporarily stopped paying restitution

because she can't afford it. She said that after she was released from jail, she couldn't purchase furniture for her children's bedroom because of steep fines she owed. Her difficult financial situation is preventing her from moving out of a bad neighborhood, and she can't find any full-time work while she has unpaid debts.

These challenges are common for low-income people saddled with hefty fines, said Woods, the public defender. "In the bigger scheme of things, it's such a low priority, because they're worried about housing and food ... getting their kids to school," he said of restitution fines. "If you have addiction issues, you're just worried about staying off the rock. There are so many other bigger issues that they are dealing with than the restitution fund fine."

Critics argue that California could clearly reduce these restitution burdens without bankrupting its financial aid program for victims. The budget for fiscal year 2014-15 includes a nearly \$62 million restitution fund "balance" or "reserve for economic uncertainties."

Jon Myers, the deputy executive officer of public affairs and outreach for the Victim Compensation and Government Claims Board, argued that the program overall does not have cash to spare and has generally been spending more than it takes in each year. In 2012-13, the fund spent roughly \$112 million while it collected roughly \$108 million, the majority of which came from fines. The roughly \$4.4 million difference illustrates the program's "structural imbalance," Myers said. "The fund is not completely secure," he said, noting that state officials recently reduced payment rates for certain expenses for victims to help ensure the solvency of the program's finances.

"I work with victims every day. I hear stories about a mother who lost a child and has to pay for a funeral she can't afford," he said. "What's the cost of the casket that a mother has to pay? A domestic violence victim that has to go out and find a new home?"

His sympathy, he added, always falls to victims in debt, not criminal offenders.

\* \* \*

FOR ROUGHLY THREE YEARS, CHLOE TURNER worked two jobs seven days a week, while going to school full-time. It was exhausting, but necessary, she said, given that her unpaid restitution fines prevented her from

### Federal Writs

• • •

### Texas Parole

• • •

### Texas Writs

We will fight endlessly for your rights and to secure your freedom.

Time is of the essence for many remedies, so please contact our office today.

You do not have to accept this. You CAN keep fighting.

Is your freedom worth it?

Surprisingly affordable.

Law Office of

**David Rushing**

723 Main St. Ste. 816

Houston, TX 77002

713-877-1300

ADVERTISEMENT



accessing certain student loans. Still, she completed an entrepreneurship-training program at Stanford Law School as well as a post-prison health worker certificate program at City College of San Francisco. And last year, she graduated from the University of San Francisco with a bachelor's degree in organizational behavior and leadership. Her plan is to eventually go to law school – a dream she will likely have to put on hold until she pays off all of her restitution.

The Newsoms, who are close friends of Turner, will also likely have difficulty achieving their long-term goals while they are still in debt. They said they want to someday start their own youth program to offer an alternative to gangs. But that would require a level of financial stability, which, at this point, seems unattainable, said Teeoni. "I don't have money to save anymore.... And if I put money in the bank to try and save up, they are going to take it away from me."

## BJS Report: Jail Population Increases in Indian Country

**J**AILS ON INDIAN RESERVATIONS ACROSS the U.S. are housing more offenders despite a decline in violent crimes, according to a report released last year.

The most recent annual Survey of Jails in Indian Country by the Bureau of Justice Statistics (BJS) reported that 2,364 prisoners were confined in 79 Indian country jails at midyear 2012 – a 5.6% increase in the jail population over the previous year.


The June 2013 survey noted, however, that only 32% of prisoners in those jails were incarcerated for a violent crime – a decrease of almost 10% from a high in 2007. Most violent offenses were for domestic violence and assault.

A majority of the total Indian country jail population (51%) was incarcerated in just 14 facilities, with nearly half of those located in Arizona. While several Indian country jails saw a decrease in incarceration rates, the Tohono O'odham Adult Detention Center in Arizona – with the largest Indian country jail population – held 229 offenders in 2012, an increase of 17.4% from the previous year.

Sixteen facilities were operating above 15% of their rated capacity as of June 2012. Indian country jails admitted a total of

Turner is eager to advance her education and career partly because she wants to someday work as a public defender. "I really want to make a difference with the clients I work with," she said. "I could advocate for them on a different level. I know where they come from. That would give me an advantage."


But with outstanding restitution debts, Teeoni is unable to access many of the student loans she would need for law school. She also can't get a Certificate of Rehabilitation, an official document that is required for admission to law school and one that could significantly boost her future job prospects.

This is despite the fact that she has, by every other measure, rehabilitated her life. 

*This two-part article was originally published by East Bay Express ([www.eastbayexpress.com](http://www.eastbayexpress.com)) in March 2014; it is reprinted with permission.*

12,502 people during 2012; the average length of stay was 5.4 days.

Sadly, higher jail populations have not resulted in increases in programming, treatment and educational services. According to the BJS's 2011 Survey of Jails in Indian Country, almost half of Indian country jails lacked GED programs, over 75% did not provide vocational or job skills programs, 64% did not offer life skills and around 46% did not have domestic violence counseling. Sex offender treatment was available at just eight Indian country jails. However, almost all of the jails offered drug or alcohol abuse treatment programs.

Most Native American prisoners are housed in correctional facilities outside Indian country reservations. Nationally, the BJS reported that 27,500 Native Americans and Alaska Natives were incarcerated in federal or state prisons and local jails in 2011; another 49,000 were on probation or parole. 

Sources: "Jails in Indian Country, 2012," U.S. Department of Justice, Bureau of Justice Statistics (June 2013); "Jails in Indian Country, 2011," U.S. Department of Justice, Bureau of Justice Statistics (Sept. 2012)



**STRENGTH STACK 52**  
114 BODYWEIGHT EXERCISE CARDS INSIDE!

**JUST \$21.95!\***  
(shipping included)

**Experience the Game of Fit!**

Send money orders or institutional checks made payable to:  
**Prisoner Assistant**  
Po Box 704  
Lake Harmony PA 18624

**Features:**  
-Soft cover book with perforated-card stock for playing cards.  
-Many fitness games available.  
-Effective NEW bodyweight training system.  
-Exercise your entire body with no equipment.




**Win Your Lawsuit**  
Sue in California Superior Court Without a Lawyer

———— \$39.99 ————

Order from **Prison Legal News**  
P.O. Box 1151  
Lake Worth, FL 33460  
561-360-2523  
Add \$6 shipping for orders under \$50

[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

# From the Editor

by Paul Wright

I HAVE LONG OBSERVED THAT IT COSTS A lot of money to be poor in America. Since our criminal justice system falls almost exclusively on those who are poor, it should be no surprise that a great deal of time and energy goes into keeping the poor ensnared in the justice system.

For decades, *PLN* has reported on the measures used to criminalize the poor and ensure they remain impoverished through imprisonment, fines, restitution, "cost of

incarceration" fees, court costs, high prison and jail phone rates, and all the myriad other ways in which prisoners, detainees and their families are financially exploited.

This month's cover story delves into some of the details of the intentional immiseration of those swept into the machinery of mass incarceration. While officially touted as a means of making mass imprisonment more affordable for the ruling class, the reality is that the exploitative nature of our justice system merely increases the number of people who, for the most part, are unable to pay the costs of being a prisoner or defendant. If the criminal justice programs designed to siphon money from the poor were effective, then prisons, jails and the court system wouldn't need additional money from government coffers.

At the Human Rights Defense Center (HRDC), *PLN*'s parent organization, we are doing our part to try to reduce the cost of being poor in America. For example, we continue to push the Federal Communications Commission to reduce and cap the costs of all prison and jail phone calls, including intrastate (in-state) calls. On July 9, 2014, *PLN* managing editor Alex Friedmann and I testified at an FCC workshop in Washington, DC about the continuing need for reform with respect to prison and jail phone rates. We will continue to report on developments in this regard; HRDC is a co-founder and

coordinator of the national Campaign for Prison Phone Justice, along with MAG-Net and Working Narratives.

You can help! We need copies of phone bills reflecting the cost and charges associated with prison and jail phone calls. If you or your family has such bills, please send them to our Florida mailing address to the attention of David Ganim, our PPJ Director. In addition to costs related to the calls themselves, we are also interested in additional charges such as the cost of setting up a prepaid account, putting money on phone accounts using credit cards, monthly account fees, etc.

Between now and the end of the year we are running our Subscription Madness campaign, which offers steeply discounted multiple one-year subscriptions to *PLN* for first-time subscribers. The goal is to introduce new people to *PLN*. Take advantage of this special offer and order multiple *PLN* subscriptions for your friends, family members and favorite government officials and policymakers! See the Subscription Madness ad on p. 11.

Also note that *PLN* sends out a free email list that includes between 6 and 10 criminal justice news reports, five days a week. Did I mention it's free? Our email list has current criminal justice-related stories with something for everyone. To sign up, just go to: [www.prisonlegalnews.org/subscribe/email](http://www.prisonlegalnews.org/subscribe/email). 📧

**Corcoran Sun**  
Full Color Prison Yard Monthly  
News ♦ Entertainment ♦ Resources  
**3 Month Special Subscription**  
**\$5 or 20 FCS Stamps**  
**NOW 20 PAGES**  
Expanded full color format with exciting episodes of thrilling novels and sexy pics. Many how-to articles on writing, art, music and health. Filled with entertainment: puzzles, trivia, jokes, poetry... Submit your writing, art, poetry etc. See your submission, name and contact info in print.  
**Special 6-Issue Subscription (\$10 or 40 FCS stamps)**  
**Special Year Subscription (\$20 or 80 FCS stamps)**  
NEW Books/Sheets/Strips ONLY No singles on special please  
**Freebird Publishers**  
Box 541, North Dighton, MA 02764  
[www.FreebirdPublishers.com](http://www.FreebirdPublishers.com)  
[Diane@FreebirdPublishers.com](mailto:Diane@FreebirdPublishers.com)



Want another chance?



**inPENPALS®**  
where meaningful relationships *begin*

Write to:  
*inpenpals*  
P.O. Box 18245  
San Antonio, TX 78218

[www.inpenpals.com](http://www.inpenpals.com)  
Tambien esta disponible en espanol

**Photo Tryst**  
**PO Box 103**  
**Chapmansboro TN 37035**

**Quality Pics of Quality Babes**

All catalogs 450 full color pics  
Summer 2013 free with SASE  
All other catalogs \$4 or 10 forever stamps, and ship with a coupon for 5 free pics with your minimum order of 10

Winter 2014 Nudity)	Spring 2014 All Nude #1 (you see it all)	Topless #1 (contains frontal
---------------------	------------------------------------------	------------------------------

Our next general (season) catalog free with each order  
You can deposit funds with us and order your pics "on account"  
We accept institutional checks, personal checks from friends and family, and money orders  
Stamp orders are only with stamp coupons obtained with regular orders  
Oregon and Utah consistently deny our catalogs so we cannot do business there. Sorry

# PLN Settles Lawsuit Against Kenosha County, Wisconsin for \$116,500

by Derek Gilna

**A**FTER 29 PRISONERS AT A JAIL IN Kenosha County, Wisconsin did not receive their monthly copies of *Prison Legal News* or informational brochures and soft-cover books mailed by PLN, PLN filed suit in federal court alleging First and Fourteenth Amendment violations by the Sheriff's Office. According to Jon Loevy, one of the attorneys representing PLN, the county agreed to a settlement in May 2014 requiring it to pay damages and attorney's fees, and to change its policy on publications sent to prisoners.

Loevy noted that county officials had reversed "an unconstitutional policy and [brought] it into compliance." He added: "To their credit, rather than spending taxpayer money fighting a losing battle, they decided to make the policy compliant with the First Amendment."

PLN had alleged in its June 27, 2013 complaint that the Kenosha County jail's blanket ban on *Prison Legal News* and similar publications violated a "constitutionally

protected liberty interest in communication with incarcerated individuals, a right clearly established under existing law."

Shortly after PLN filed suit, Kenosha County began to backtrack on its policy, stating through a spokesman that "nothing was brought to [the county's] attention until the lawsuit was brought. We immediately looked at [the policy], realized it was out of date and updated it to allow magazines and books with some restriction on content" – such as publications that pose a threat to the safety or security of the facility or that contain sexual or lewd content.

As part of the settlement, Kenosha County agreed not to implement "blanket bans" on books, magazines, newspapers or other publications sent directly to prisoners from publishers. Both prisoners and senders of rejected publications must receive written notice, as well as information on how to appeal censorship decisions. The county is also required to post the new policy at the jail and on its website, according to an

Order of Stipulation and Dismissal entered pursuant to the settlement. Lastly, the county agreed to pay \$116,500 in damages and attorney's fees.

PLN was represented by the Chicago law firm of Loevy & Lovey and by Human Rights Defense Center general counsel Lance Weber. See: *Prison Legal News v. Beth*, U.S.D.C. (E.D. Wis.), Case No. 2:13-cv-00737-JPS.

PLN has long advocated that prisoners and detainees have the same First and Fourteenth Amendment rights as other citizens to receive written materials, subject to legitimate security concerns, and PLN has filed and won numerous lawsuits to protect those rights. [See, e.g., *PLN*, May 2010, p.8]. Without the ability to receive books and other publications, prisoners are denied access to information that can assist them while incarcerated and help them reintegrate into society following their release. ■

Additional source: [www.kenoshanews.com](http://www.kenoshanews.com)

**The American Friends Service Committee is seeking testimony from men, women, and children in US prisons.** Both the United Nations Periodic Review of the US and the Shadow Report for the UN Convention Against Torture are due within the next few months. Both need input from you on "no touch" (solitary), physical and chemical torture, rape, racism, brutality, sexual and other violence, lack of medical care and other aspects of prisoner treatment that violate human rights. We will be accepting testimonies until September 2014. Although we are unable to respond, you will receive confirmation of receipt of testimony. The writing should be no more than two pages describing what you have experienced or seen. Send to Bonnie Kerness, AFSC, 89 Market St. 6th floor, Newark, NJ 07102. We appreciate your courage in sharing your voice. Thank you.

## NEW FRIENDS, HIGHER EDUCATION, AND EMPLOYMENT & HOUSING UPON RELEASE THROUGH WRITEAPRISONER.COM PROFILES

**Contact WriteAPrisoner.com & Start Looking Forward To Mail Call!**

AS SEEN ON

CNN, 20/20, Fox News, Dr. Phil, O Magazine, E! True Hollywood, and hundreds more!

**WriteAPrisoner.com...**

Simply the largest, highest ranked, & most visited website of its kind!

- Pen-pal Profiles are affordably priced at \$40 for the first year, \$30 for renewing year
- Features a comprehensive search that allows viewers to find your profile by age, race, location, keywords, & more - 32 search options in all
- Your new friends can email their first message to you along with a photo
- Advertises non-stop on every major search engine with thousands of websites linking back to us
- Offers free Reintegration Profiles for inmates seeking employment and housing upon release and education during incarceration
- Translated into 51 languages & geared for international search engines
- Viewers can "subscribe" to your profile to be notified when your profile is updated, blog is added, artwork is posted, poetry is added, your release is near & much more
- Pen-pals have the option of helping you with a broad range of topics using WriteAPrisoner.com's free Self-Help Series



**Get Started Today!**

Friends & family can submit your entire 250 word profile, photo, and payment for you online by visiting

[www.writeaprisoner.com/post](http://www.writeaprisoner.com/post)

Or for a FREE Brochure, Send a S.A.S.E. to:

WriteAPrisoner.com  
PO Box 10- PLN  
Edgewater, FL 32132 USA



Proud member of the Better Business Bureau of Central Florida & the Southeast Volusia Chamber of Commerce.  
\*Our website traffic can be independently verified at [www.quantcast.com/writeaprisoner.com](http://www.quantcast.com/writeaprisoner.com)





# Qui Tam Lawsuits Under the Federal False Claims Act – An Overview

by Sabarish Neelakanta

THE QUI TAM PROVISIONS OF THE FEDERAL False Claims Act (FCA)<sup>1</sup> exist to encourage whistleblowers who are aware of fraud against the government to bring such information forward. See 31 U.S.C. §§ 3729–3733. Private contractors guilty of defrauding the federal government are liable for a civil penalty of \$5,500 to \$11,000 per claim, plus three times the government's damages. *Id.* at § 3729(b).

A civil suit filed by an individual on behalf of the government is known as a *qui tam* action, and the person bringing the action is referred to as a "relator." The relator may be awarded 15–30% of the proceeds of any recovery or settlement, plus expenses and reasonable attorneys' fees and costs. *Id.* at § 3730(d)(1)–(2). Recoveries in FCA cases often result in millions of dollars in settlements or damage awards, providing a significant incentive for individuals with inside knowledge of fraudulent conduct to report such activity.

Within the criminal justice context, *qui tam* lawsuits can be used to expose mistreatment and fraud at privately- or publicly-operated correctional facilities. Prisons are required to provide adequate food, medical care (including mental health

and dental care) and sanitation, among other things. To the extent that private contractors fail to adhere to these requirements, such as billing federal agencies for services not provided, they may be violating contractual obligations or engaging in fraud against the U.S. government, thereby subjecting them to an FCA suit.

This article is intended to provide readers with a general overview of the *qui tam* provisions of the FCA and similar statutes in individual states, as well as the procedural requirements for and statutory bars to filing a *qui tam* action.

## What is the False Claims Act?

THE FCA, IN PERTINENT PART, MAKES IT illegal for any person to: "1) knowingly present, or cause to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval; 2) knowingly make, use, or cause to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government; 3) conspire to defraud the Government by getting a false or fraudulent claim paid or approved by the Government;

...or 7) knowingly make, use, or cause to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government." *Id.* at § 3729(a)(1)(3).

In sum, the FCA imposes liability on any person who submits a claim<sup>2</sup> to the federal government that he or she knows (or should know) is false or fraudulent. State false claims acts prohibit the same type of conduct with respect to claims filed with state agencies.<sup>3</sup>

## How do you file a False Claims Act suit?

UNLIKE A CIVIL RIGHTS CASE OR OTHER civil suits, a *qui tam* relator may not pursue a case pro se; because the relator is representing the government, he or she is required to have counsel. There are also special filing requirements when initiating a *qui tam* lawsuit under the FCA. First, the complaint must be filed with the court under seal and must not be served on the defendant. Rather, the complaint and a written statement of all material evidence substantiating the claim have to be submitted to the U.S. Attorney General (for the federal FCA) or state Attorney General (for state FCA claims). *Id.* at § 3730(b)(2). The case will remain under seal for 60 days in order for the government to determine whether it will intervene; the complaint cannot be served until the government decides if it will intervene and the court orders service. *Id.*

After the 60-day period expires, the government can: 1) request more time to investigate the claim; 2) intervene and prosecute the claim; 3) allow the relator to prosecute the claim; 4) move to dismiss the suit; or 5) try to settle the suit. See *Id.* at § 3730(b)(3); § 3730(b)(4)(A)(B); and § 3730(c)(2)(A)(B).

Even if the government does not intervene while the case is under seal, it may do so later upon a showing of good cause, after which it will be responsible for prosecuting the case. *Id.* at § 3730(c)(1). The government can also settle the case over the objection of the relator so long as there is a hearing to allow the relator to express any

## Calling for Essays by Incarcerated Americans, Prison Workers, and Prison Volunteers

THE American Prison Writing Archive (APWA) is an internet-based, non-profit archive of first-hand testimony to the living and working conditions experienced by incarcerated people, prison employees, and prison volunteers. Anyone who lives, works, or volunteers inside American prisons or jails can contribute non-fiction essays, based on first-hand experience: 5,000 word limit (15 double-spaced pages); a signed APWA permission-questionnaire must be included in order to post work on the APWA. All posted work will be accessible to anyone in the world with internet access. For more information and to download the permissions-questionnaire, go to: <http://www.dhinitiative.org/projects/apwa/>, or write to: APWA, 198 College Hill Road, Clinton, NY 13323-1218. Sincerely—The APWA Editors.



concerns and the court finds the settlement is fair. *Id.* § 3730(c)(2)(B). The relator is entitled to 15-30% of the amount recovered if the government intervenes, and 25-30% if the relator prosecutes the claim without government intervention. *Id.* at § 3730(d)(1). Lastly, the FCA includes its own statute of limitations – six years for claims brought by private *qui tam* relators, and for actions brought by the government, three years from when the violation was or should have been discovered, but in no event more than ten years. *Id.* at § 3731(b).

### What bars are there to filing a *qui tam* action?

THERE ARE SEVERAL CIRCUMSTANCES under which a *qui tam* action can be statutorily barred. For example: 1) The relator was convicted of criminal conduct arising from his or her role in the FCA violation. *Id.* at § 3730(d)(3); 2) Another *qui tam* action concerning the same conduct already has been filed. *Id.* at § 3730(b)(5); 3) The government is already a party to a civil suit or administrative civil money penalty proceeding concerning the same conduct. *Id.* at § 3730(e)(3); and 4) The *qui tam* action is based

upon information that has been disclosed to the public through any of several means, including criminal, civil or administrative hearings in which the government is a party, or government hearings, audits, reports or investigations, or through the news media – unless the relator was the original source of the information. *Id.* at § 3730(e)(4)(A). An original source is a relator who has “inside” information or personal knowledge of fraud against the government.

There are few reported cases involving *qui tam* actions within the prison context. In one 1999 ruling by the D.C. Circuit Court of Appeals, a prisoner brought a False Claims Act suit against Federal Prison Industries (FPI, also known as UNICOR), claiming that FPI “had falsely certified that the communication cables and weapons parts that it produced for the Department of Defense had been adequately tested and met the requisite quality standards.” The appellate court held FPI was entitled to sovereign immunity because it is a wholly-owned government corporation – not a private entity – and had not waived its immunity. See: *Galvan v. Federal Prison Indus.*, 199 F.3d 461 (D.C. Cir. 1999). ■

*Sab Neelakanta is a staff attorney for the Human Rights Defense Center (HRDC), the parent organization of Prison Legal News. HRDC is interested in representing relators who have direct knowledge and evidence of fraud involving the federal government.*

### Endnotes

1 Several laws, both state and federal, provide private causes of action, or legal protection and remedies for whistleblowers. This article focuses solely on the *qui tam* provisions of the federal False Claims Act.

2 “[A] claim includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.” 31 U.S.C. § 3729(c).

3 The following states have their own false claims acts which parallel the federal FCA: California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Virginia, Washington and Wisconsin – plus the District of Columbia.

# INMATE TOLL BUSTERS

## Discount Inmate Telephone Calling Services

*Serving: Federal & State Prisons, County Jails and INS Detention Centers Nationwide*

**FREE Same Day Installation, Only \$1.25 Per Month and 6¢ Per Minute**

## PAY ONLY FOR MINUTES YOU USE

**[www.InmateTollBusters.com](http://www.InmateTollBusters.com)**

**Call 24 Hours: 888-966-8655**

We Send Calls To Cell Phones.  
International Call Services Available.  
Call For Rates. Se Habla Español.



# How to Starve the For-profit Prison Beast

by Justin Jones

**I** KNOW SOME PRIVATE PRISON LOBBYISTS who would love it if you were found with a cell phone. Assuming, of course, that you're already locked in one of the prisons their clients operate in Oklahoma.

Introducing a cell phone into a correctional facility used to be a misdemeanor in Oklahoma. Now, it's a felony. This change did not happen for any reason other than a private prison lobbyist provided his client with a good way to make even more revenue off of people already imprisoned. Bumping this crime up from a misdemeanor to a felony means that when a person is caught with a cell phone in prison, he or she will end up staying in prison even longer; in most cases the new sentence will be added to the end of the existing one, instead of allowing people to serve time for both the crime that landed them behind bars and the cell phone infraction simultaneously. More prison time, more profits.

Does it matter that this policy has zero public safety value, as cell phones were already considered contraband behind bars? Not to a private prison company. When a lobbyist approached me on the statehouse steps and said he was pushing for enhanced punishment for having a cell phone in prison, I responded by stating this simply was not smart, evidence-based policy. I haven't seen proof that this type of enhancement, where you convert a misdemeanor to a felony, deters crime. I asked the Governor not to sign the bill, but – after concerted lobbying from the private prison company – he signed it anyway.

And sadly, folks, that is how criminal justice policy gets made. This change in the law was never motivated by a sincere interest in reducing the number of cell phones in correctional facilities. That was just a front. This change was motivated by increasing private prison companies' profit margins.

You can show me any section of the criminal code, and I can tell you the anecdote that put that policy in place. Laws rarely make their way to the books because of research, data analysis or evidence-based best practices. Instead individual financial greed – and not the public interest – is all too often the driving force behind criminal justice policy.

I know. I saw firsthand how illogical criminal justice policies are created as the Director of the Oklahoma Department of Corrections.

Here's how the scheme works: Private prisons create demand for their services much like drug dealers ensure that their customers are addicted, but not so addicted that they die. These companies inject their lobbying dollars and campaign contributions into the political world, contributing to a climate in which no one can be reelected by appearing soft on crime. The result is a machine that passes laws to ensure more and more people flow into prisons, regardless of whether society actually is made better by having these people behind bars.

The bottom line is that private prisons' current business plans simply cannot coexist with meaningful evidence-based sentencing

reform. If we want a fair and smart system, we have to cut these dangerous pushers out of the deal entirely.

We need to replace profit-seeking policies with proven, evidence-based ways to end mass incarceration while keeping our communities safe. Here are just a few of the changes we could make right now to pave a path toward a smart and fair criminal justice system:

- Eliminate mandatory minimum sentences.
- Transfer severely and/or chronically mentally ill prisoners to state agencies responsible for mental health treatment.
- Prohibit "lock-up quota" contracts with private prison companies, in which the jurisdiction promises to send enough prisoners to a private facility to meet a "lock-up quota" or pay the company for falling short of the quota.
- Make probation a real possibility for people convicted of non-violent crimes.

CEO profits and shareholder returns have no place in our criminal justice system. Cutting the profit motive out will mean a return on public investment that actually reduces future victimization, breaks inter-generational cycles of incarceration, and reduces pathways to prison.

It's time we valued people and our communities over profits. 🖊️

*Justin Jones is a former director of the Oklahoma Department of Corrections. This article was originally published by the ACLU ([www.aclu.org](http://www.aclu.org)) on April 24, 2014; it is reprinted with permission.*

## Earn an Adams State University Degree via Correspondence Courses



- Correspondence Courses via mail • No internet access required
- Degree options available — Associate of Arts or Science, Bachelors degrees in English, Business Administration, Government, History, Interdisciplinary Studies, Sociology, Paralegal Certificate Program, Masters Degree in Business Administration
- Affordable tuition — \$165/semester hour for undergraduate correspondence courses, \$350/semester hour for Masters level correspondence courses  
Payment options include cashiers check, credit card, money order or verified personal check
- Accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools
- 16+ years of experience serving incarcerated students
- Veteran friendly
- FREE unofficial evaluation of previously earned credits



Call or write to receive additional information — 800-548-6679  
Adams State University  
Office of Extended Studies, Suite 3000  
208 Edgemont Blvd. Alamosa, CO 81101  
[www.adams.edu](http://www.adams.edu)

# States Renewing Their Prison Phone Contracts

*As state DOCs renew or rebid their prison phone contracts, you can help urge them to lower intrastate phone rates and eliminate commission kickbacks!*

*The Campaign for Prison Phone Justice needs your help in:*

**\*\*\*\* Nevada, New Jersey and Vermont \*\*\*\***

The Departments of Corrections in the above states are in the process of re-bidding or renewing their prison phone contracts. Most DOCs receive a commission (kickback) on revenue generated from calls made by prisoners, which results in excessively high phone rates. Although the FCC voted last year to cap the costs of interstate (long distance) prison calls, which went into effect on February 11, 2014, the order does not apply to intrastate (in-state) calls. An estimated 85% of prison phone calls are in-state. This is an opportunity to ask DOCs to forgo commissions and ensure their new prison phone contracts are based on the lowest cost to those who pay for the calls – mostly prisoners' families.

## **Take Action NOW! Here's What YOU Can Do!**

Ask your family members and friends to write, email, call and fax the DOC and the governor's office (addresses and contacts are listed below), requesting that the DOC: 1) forgo commission payments when re-bidding or renewing its prison phone contract, and 2) base the new contract on the lowest calling costs. Lower prison phone rates should apply not just to long distance calls but also to in-state calls. For a sample letter or to easily send an email, visit the Campaign for Prison Phone Justice's website and click on the "Take Action" tab:

**[www.phonejustice.org](http://www.phonejustice.org)**

## **Prison phone contract information & Contacts:**

**Nevada:** Receives a 54.2% kickback; existing contract expires on 8-28-2014. Charges \$2.95 for a 15-minute collect intrastate and local call. **Contacts:** Nevada DOC, Director James Cox, 3955 West Russell Road, Las Vegas, NV 89118; ph: 702-486-9910, fax: 702-486-9961, email: gcox@doc.nv.gov. Governor Brian Sandoval, State Capitol Building, 101 North Carson Street, Carson City, NV 89701; ph: 775-684-5670, fax: 775-684-5683, email: scheduling@gov.nv.gov

**New Jersey:** Previously received a 41% kickback (currently suspended); existing contract expires on 9-3-2014. Charges \$2.55 for a 15-minute collect intrastate or local call. **Contacts:** New Jersey DOC, Commissioner Gary Lanigan, New Jersey Department of Corrections, P.O. Box 863, Trenton, NJ 08625; phone: 609-826-5656, fax: 609-292-9083, email: gary.lanigan@doc.state.nj.us. Governor Chris Christie, The State House, P.O. Box 001, Trenton, NJ, 08625; phone: 609-292-6000, fax: 609-777-2922, email: constituent.relations@gov.state.nj.us (Attn: Jeanne Ashmore)

**Vermont:** Receives a 31% kickback; existing contract expires on 9-30-2014. Charges \$3.23 for a 15-minute collect intrastate call and \$2.03 for a collect local call. **Contacts:** VT DOC Commissioner Andrew Pallito, 103 South Main Street, Waterbury, VT 05671-1001; phone: 802-951-5003, fax: 802-951-5017, email: andy.pallito@state.vt.us. Governor Peter Shumlin, Pavillion Office Bldg., 109 State St., Montpelier, VT 05609; phone: 802-828-3333, fax: 802-828-3339, email: lisa.kunin@state.vt.us

# "Mass Chaos" Reigns at Georgia Prisons

by David M. Reutter

**F**IVE FORMER GEORGIA PRISON GUARDS have pleaded guilty and three were convicted by a federal jury in connection with a severe beating that left a handcuffed prisoner hospitalized with acute brain damage. The charges followed state and federal law enforcement investigations into the assault, and the prisoner filed suit due to his injuries.

An advocacy group, meanwhile, has filed a separate lawsuit contending that violence in Georgia's prison system is "spiraling out of control," resulting in "mass chaos."

On August 15, 2012, former state prison guard Darren Douglass-Griffin, 36, a member of the Correctional Emergency Response Team (CERT) at Macon State Prison, pleaded guilty to charges of conspiracy to violate the civil rights of a prisoner and falsification of records related to the brutal beating of prisoner Terrance Dean in December 2010. The charges stemmed from an FBI investigation into organized abuse by guards at the facility.

Two other former CERT members at Macon, Emmett McKenzie and Willie Redden, entered guilty pleas in related cases. Douglass-Griffin, McKenzie and Redden remain free on unsecured bonds.

An initial Georgia Bureau of Investigation (GBI) review of the beating incident determined that it started when Dean and guard Stephen Walden quarreled in a prison dorm. Investigators said several prisoners who witnessed the argument reported that Dale and Walden then began fighting in the rear of the dorm.

A group of other guards quickly broke it up, but not before Walden suffered bruises, swelling and a sore jaw. Dean was handcuffed behind his back and dragged to the prison gym, where there were no cameras. Once there, the GBI report said, guards kicked, punched and stomped Dean into unconsciousness.

The beating stopped only after Sgt. Christopher A. Hall physically pulled the guards off Dean. "I was screaming and pushing those guys," Hall told a GBI investigator. "Everything I was doing was to get those guys to stop."

Dean's injuries were so severe – he was temporarily in a coma – that he was first taken to a local hospital and then transferred to a medical facility in Atlanta for more specialized care.

His family learned of his plight only after a prisoner used a contraband cell phone to call Dean's brother. It took the family weeks to obtain even basic facts about his condition. "They covered it up," stated Dean's mother, Willie Maud Dean. "They didn't want us to know what they did to him."

It was not until early January 2011 that Dean's mother was finally able to see him. "He couldn't stand up. He couldn't walk on his own," she said about his injuries. "He couldn't talk. He couldn't use his hands."

The GBI investigated whether Hall's supervisors, Capt. Kevin Davis and Deputy Warden James Hinton, were aware that prisoners were regularly taken to the gym to be beaten. "I'm just trying to find out, in fairness to you, how far up this goes," GBI agent Trebor Randle told Hall in a videotaped interview. "What about the deputy warden? Does he know?"

"Yes," Hall said.

During that interview, Hall also discounted the guards' cover story. For weeks they had claimed that Dean "snatched away" from the guards restraining him, then fell and hit his head as he ran away. The truth, Hall said, was that Dean was taken to the gym – out of sight of security cameras – to be beaten in retaliation for assaulting Walden.

Despite that disclosure, Hall still tried to excuse the actions of his coworkers. "I

don't think my guys meant to do it," he said. "It just happened. They just went too far."

Although the GBI filed charges against a number of guards involved in Dean's beating, a state grand jury refused to indict them.

"It's just unfortunate that there was no indictment," observed Dean's attorney, Mario Williams. "It sends a strong message to prisoners all over Georgia that even if GBI believes correctional officers violated the constitutional rights of a prisoner, a grand jury can still come back with no indictment."

The FBI launched its own investigation and found that guards at Macon beat prisoners as punishment for misbehaving. Seven guards, including Hall, were indicted on federal charges that they "conspired to assault inmates, and ... conspired with Deputy Warden Hinton and others to cover up their misconduct by writing false reports and providing misleading information to investigators."

In addition to Hinton and Hall, the federal indictment named Ronald Lach, Jr., Delton Rushin, Kerry Bolden, Derrick Wimbush, Kadarius Thomas and Tyler Griffin.

Hall, a military veteran with a decade of prison experience, initially worked at Macon State Prison, left to work at another facility and then returned to Macon in 2009. He said there was a huge deterioration in conditions following his return.

"The inmates were wild," he stated. "It was a big change. Inmates assaulting the staff everywhere. People scared to come to work. The whole atmosphere was just chaos. All of it."

Hall said the atmosphere negatively impacted staff at the facility. "Everybody's just tired," he said. "Just exhausted, man. Tired and mentally worn out."

When pleading guilty, Douglas-Griffin admitted that he and other guards had beaten three prisoners at Macon in 2010 to punish them, then falsified reports to cover it up.

The admissions by Hall and Douglas-Griffin came as no surprise to Sarah Geraghty, a senior staff attorney with the Southern Center for Human Rights, which filed a lawsuit in 2011 alleging systematic

## WISDOM IS THE KEY TO SUCCESS Get Wise; Get a SMITH'S GUIDE™

### SMITH'S GUIDE to Executive Clemency for State and Federal Prisoners

For those who have exhausted all legal remedies or have sentences that are too long to serve, this book lays out every aspect of the clemency process. [288 pages]

### SMITH'S GUIDE to Chapter 7 Bankruptcy for Prisoners

Get immediate freedom from liens against offender account by filing chapter 7 bankruptcy. Includes required bankruptcy forms and detailed filing instructions.

\$24.95 + \$6.95 shipping/handling (in CA, include additional sales tax of \$2.18) for each book. Please specify book(s) ordered. Sent via USPS media mail. Money orders, personal checks or institutional checks ONLY. Send name, address and DOC/BOP number, with payment of \$31.90 (in CA, \$34.08) per book, payable to Roberts Company:

Roberts Company, 15412 Electronic Lane #101  
Huntington Beach, CA 92649  
Also available on Amazon.com





brutality by guards at nearby Hays State Prison, where several prisoners have been killed. [See: *PLN*, Feb. 2014, p.1].

In fact, according to a legislative hearing held on April 10, 2014, 32 prisoners and one guard have been murdered in Georgia's prison system since 2010 – a significant increase over previous years.

"Too many people have died needless deaths in the DOC in Georgia. One person has died and then the next, without the State making meaningful changes to keep people safe in custody," Geraghty said. "The message communicated is that these are lives that we value less than other lives, and that is very wrong, totally inappropriate, and unacceptable."

"Things seem to be spiraling out of control," she added. "We are seeing mass chaos, essentially, in many of the prisons."

The Southern Center for Human Rights released a report in July 2014 titled "The Crisis of Violence in Georgia Prisons," calling for an investigation by the U.S. Department of Justice. The report cites incidents where prisoners were assaulted by other prisoners with knives, boiling water, broom handles and other weapons.

"People who are supposed to be running our prisons have lost control," said Geraghty. "It appears they either cannot or will not take appropriate steps to address the level of violence."

Terrance Dean filed a lawsuit in U.S.

District Court in August 2012 against Hall, Davis, Hinton and other guards involved in his beating, claiming that the "deliberate, sadistic and malicious" attack was part of a broad pattern of illegal conduct by Macon State Prison employees. The case settled in June 2013 for \$350,000. See: *Dean v. Douglas*, U.S.D.C. (M.D. Ga.), Case No. 5:12-cv-00120-CAR.

Four years after the beating, Dean remains disabled as he serves the rest of his 20-year sentence for armed robbery. Incarcerated at Georgia's medical prison near Augusta, his left foot is still twisted inward and his speech is slurred. He must take anti-seizure medication three times a day and can walk only with the help of a leg brace.

"He's not the brother that went in there," said his older sister, Stephanie Dean.

In June 2014, following a two-week federal jury trial, former Sgt. Hall and guards Ronald Lach, Jr. and Delton Rushin were convicted in connection with Dean's beating. They were all found guilty of obstruction of justice and conspiring to


obstruct justice; Lach was also convicted of violating Dean's civil rights.

Two other defendants, Derrick Wim-bush and Tyler Griffin, as well as Deputy Warden Hinton, were acquitted. Griffin and Hinton had been placed on paid administrative leave pending their trial. Previously, Thomas had pleaded guilty in September 2013 while Bolden pleaded guilty in January 2014.

"Eight former corrections officials from Macon State Prison now stand convicted for their involvement in beating inmates and in the coordinated cover-ups that followed each assault," stated Acting Assistant Attorney General Jocelyn Samuels. "These officers betrayed the public trust by using their official positions to commit violent civil rights abuses and then tried to cover up their crimes."

None of the guards who pleaded guilty or were convicted have been sentenced. ■

Sources: *Associated Press*, *Huffington Post*, [www.ringoffireradio.com](http://www.ringoffireradio.com), [www.fbi.gov](http://www.fbi.gov), [www.blackamericaweb.com](http://www.blackamericaweb.com), [www.cjnotebook.com](http://www.cjnotebook.com), [www.macon.com](http://www.macon.com), *CNN*, [www.altantaprogressivenews.com](http://www.altantaprogressivenews.com)



**PASS**

Prisoner Assistance Scholastic Service provides educational materials nationally to prisoners in state and federal prisons and jails.

- ◆ Victim Awareness
- ◆ Anger Management
- ◆ Addiction/Substance Abuse
- ◆ Domestic Violence
- ◆ Gang Diversion
- ◆ Conflict Resolution
- ◆ Parenting
- ◆ Non-violent Communication
- ◆ Re-entry in Society
- ◆ Living With Purpose

**10 COURSES  
2 SEMESTERS**

Graded study - completed through the mail.

**1-888-670-7277**

PASS Program, PO BOX 2009, San Francisco, CA, 94126

Prisoners who successfully complete the PASS program earn a degree in Personal Psychological Development which can be used as evidence of rehabilitation before parole boards and with prison officials.

**\$500 for the entire course of study and degree.**

**FOR MORE INFO**

[www.passprogram.org](http://www.passprogram.org)  
pass@passprogram.org

# BRANLETTES BEAUTIES

**OUR SIMPLE POLICIES:**

SPECIAL REQUESTS ARE NOT PERMITTED AND ALL MODELS ARE OF LEGAL AGE (BOP-FRIENDLY). DUE TO TREMENDOUS TIME AND COST ANSWERING LETTERS, UNLESS YOU ARE PLACING AN ORDER OR A QUESTION REGARDING YOUR ORDER, WE WILL NOT REPLY TO ANY OTHER QUESTIONS. SASE ARE REQUIRED FOR ANY INQUIRIES OR CONCERNS!

**YOU AND YOU ALONE ARE RESPONSIBLE FOR YOUR SELECTIONS BEING ALLOWED INTO YOUR FACILITY:**

KNOW YOUR INSTITUTIONS POLICIES AS TO WHAT IMAGE CONTENT IS ALLOWED. RETURNED ORDERS ARE NON-REFUNDABLE. THEY WILL BE HELD FOR 14 CALENDAR DAYS IN ORDER FOR YOU TO SEND SELF-ADDRESSED STAMPED: 3 FIRST CLASS STAMPS PER ENVELOPE, WITH A STREET ADDRESS FOR EVERY 20 PICTURES. ALL RETURNED IMAGES HELD AFTER TWO WEEKS WILL BE RE-SOLD AND WE WILL RETURN TO OUR STOCK.

**ALL PAYMENTS ARE BY INSTITUTIONAL CHECKS OR U.S. POSTAL SERVICE OR WESTERN UNION MONEY ORDERS.**

THESE PAYMENTS ARE PROCESSED IMMEDIATELY AND SHIPPED IN LESS THAN 3-4 WEEKS. ANY OTHER COMPANY MONEY ORDERS DELAY SHIPMENT 8-10 WEEKS OR UNTIL THAT MONEY CLEARS OUR BANK. YES, WE DEAL WITH PEOPLE THAT ARE, WHILE IN PRISON, STILL TRYING NICKEL AND DIME SCAMS...

**ALL SALES ARE FINAL! EACH CATALOG HAS 84 GORGEOUS LADIES TO CHOOSE FROM HIGH QUALITY PRINTS ON 4X6 GLOSSY PHOTO PAPER**

**OUR PRICES ARE SIMPLE:**

1-4999 PHOTOS = 0.45 CENTS EACH  
5000+ PHOTOS = 20% DISCOUNT  
1-9 CATALOGS : \$3.00 EACH (+SASE)  
10 CATALOGS: \$25.00+SASE (4 STAMPS)

**SHIPPING & HANDLING:**

DUE TO VARIOUS PRISON POLICIES REGARDING HOW MANY PICTURES CAN BE SENT IN ONE ENVELOPE, OUR POLICY IS AS FOLLOWS:

01 - 5 PHOTOS----\$1.00 PER ENVELOPE  
06 - 15 PHOTOS---\$1.50 PER ENVELOPE  
16 -25 PHOTOS---\$2.00 PER ENVELOPE

**BRANLETTES BEAUTIES**

SELECT YOUR FAVORITE:

WHITE CATALOGS (60 VOLUMES)  
BLACK CATALOGS (60 VOLUMES)  
ASIAN&LATINO CATALOGS (60 VOLUMES)  
PLEASE STATE WHAT STYLE PHOTOS:  
PROVOCATIVE POSES OR NUDE

**FREE CATALOG???**

YOU READ IT RIGHT!  
JUST SEND US TWO U.S. FOREVER STAMPS AND A SELF ADDRESSED SELF ENVELOPE AND WE WILL SEND TO YOU ONE NUDE OR BOP-FRIENDLY SAMPLE CATALOG (1 PER CUSTOMER) WITH 84 GORGEOUS GIRLS IN FULL COLOR. ACT NOW AS THIS OFFER WILL NOT BE AROUND LONG!!

**BRANLETTES**  
P.O.BOX 5765  
BALTIMORE, MD  
21282

BRANLETTES BEAUTIES BAG A RANDOM SELECTION OF 50 OF THE RARE AND EXOTIC \*\*\*YES, FIFTY BEAUTIES ALL POSING JUST FOR YOU! \*\*\* PLUS TWO OF OUR FINEST COLOUR CATALOGS ONLY \$19.95 DID YOU READ THAT RIGHT??? \*\*\*\$19.95??? YES, ONLY \$19.95 FOR 50 OF BRANLETTES BEAUTIES (PLEASE SPECIFY NUDE OR BOP-FRIENDLY) +++PLUS +++ TWO OF OUR FINEST COLOUR CATALOGS FREE (YOU PICK A VOLUME) OUR REGULAR SHIPPING AND HANDLING POLICIES APPLY.

# Temple University Acts on Complaint Against Authors of Private Prison Study

IN RESPONSE TO AN ETHICS COMPLAINT filed against Temple University professors Simon Hakim and Erwin A. Blackstone, a Temple official wrote in July 2014 that she had examined the complaint and the University took action as a result.

The complaint, filed in June 2013 by PLN managing editor Alex Friedmann, noted that when Hakim and Blackstone initially released the results of their research – which found substantial cost savings and comparable quality of service by privately-operated prisons – their working paper failed to disclose they had received funding from the nation's three largest private prison companies. [See: *PLN*, June 2013, p.32].

Further, Hakim and Blackstone wrote editorials published in newspapers in at least five states regarding their research, most of which did not disclose the funding source of their study. Friedmann wrote counter-editorials, four of which were published.

The ethics complaint argued that the professors' failure to adequately disclose their private prison study had received funding from the private prison industry violated several University policies related to academic research. The complaint also noted the study relied upon American Correctional Association (ACA) standards to evaluate quality of service at private prisons without disclosing the close financial and leadership connections between the ACA and private prison firms.

For example, the complaint stated: "The ACA essentially sells accreditations of correctional facilities, as accreditation is

only provided for a fee amounting to thousands of dollars per facility.... not only does the ACA receive accreditation fees from privately-operated facilities (as it does from government-run facilities), but private prison firms serve as sponsors of the ACA's biannual conferences and run paid advertisements in ACA publications." Further, "there is some overlap between the ACA and the private prison industry with respect to personnel: Daron Hall, the ACA's immediate past president, is a former CCA program manager, while at least two CCA officials, former Vice President Dennis Bradby and CCA warden Todd Thomas, have served as ACA auditors. Thomas is additionally a member of the ACA's legislative committee and, notably, CCA Vice President Harley Lappin chairs the ACA's standards committee."

The ethics complaint filed against professors Hakim and Blackstone resulted in news coverage by a variety of media agencies, including the *Philadelphia Inquirer*, *Philadelphia Weekly*, *Inside Higher Ed* and *In These Times*, as well as *The Temple News*, the University's paper.

A number of groups contacted Temple University concerning the ethics complaint and private prison study, including a letter from three Philadelphia-based locals of the American Federation of State, County & Municipal Employees (AFSCME). In addition, more than a dozen organizations, including the Pennsylvania Institutional Law Project, National Lawyers Guild and Southern Center for Human Rights, submitted a joint letter to Temple regarding the study and ethics complaint in May 2014; the letter was coordinated by In the Public Interest.

Dr. Michele Masucci, Interim Vice Provost for Research at Temple, stated in a July 2, 2014 letter that she had concluded an examination of Friedmann's complaint.

"As you know," she wrote, "the working paper was withdrawn and is no longer widely available. Additionally, University records do not reveal that it received grant funds" for the private prison study, and thus "many months ago we directed that correction be made to any publication that inaccurately attributed Temple's connection to this work."

Further, Dr. Masucci stated the University would "address its conclusions,

including any action specific [sic] pertaining to the respondents, individually with Drs. Hakim and Blackstone."

Temple University did not release the results of its investigation into the ethics complaint, however, or disclose any action taken against the authors of the private prison study. "It's a personnel matter. I can't go into details," said Temple spokesman Brandon Lausch. "We concluded our examination of the matter with the professors and addressed it," he added.

"Although it took Temple officials over a year to act on my ethics complaint, I'm pleased that they realized the serious nature of the complaint and disassociated the University from the private prison study, and that the working paper was withdrawn," said Friedmann. "Of course, it would have been better had Temple released the results of its investigation, such as whether Hakim and Blackstone owned stock in the private prison firms that funded their study. It's ironic that the University has not fully disclosed the outcome of its investigation into my complaint against two of its faculty members who failed to fully disclose the source of their research funding."

ColorOfChange, the nation's largest online civil rights organization, has launched a campaign targeting Hakim and Blackstone's study, using the tag line: "The best research money can buy?"

Meanwhile, U.C. Berkeley researcher Christopher Petrella issued an open letter debunking some of the flawed methodology of Hakim and Blackstone's research, and called on Corrections Corporation of America to stop citing their study. CCA and private prison firm GEO Group – both of which funded the study, along with Management & Training Corp. – have incestuously cited it in their promotional materials, on their websites and in public statements.

Efforts to urge Temple University to release the results of its investigation into the ethics complaint, and to adopt a policy requiring disclosure of corporate funding at all stages of the research publication process, remain ongoing. ■

Sources: *Human Rights Defense Center press release (July 15, 2014)*, *Philadelphia Inquirer*, *The Philadelphia Tribune*, [www.colorofchange.org](http://www.colorofchange.org)

## TYPING

### SERVICES

Provided since 1998

Specifically designed, with special rates for the incarcerated person.

Black / Color Printing and Copying

SEND A SASE FOR A "FREE" PRICE LIST AND MORE INFORMATION TO:

LET MY FINGERS DO YOUR TYPING

Sandra Z. Thomas (dba)

P O Box 4178

Winter Park, Florida 32793-4178

Phone: 407-579-5563

Special Offer: \$2.00 off first order.

Special offer void after: 12/31/2014

# WELCOME TO KRASNYA BABES & KRASNYA STUDS WORLD

TENS OF THOUSANDS OF THE HOTTEST AND MOST SCANDALOUS BABES&DUDES FOUND ON THE PLANET.  
EACH CATALOG PAGE HAS 120 BEAUTIFUL GIRLS OR BOYS POSING JUST FOR YOU!  
ORDER ONE CATALOG PAGE FOR ONLY \$4.50 OR FOR 10 U.S. FOREVER STAMPS WITH AN SASE ENCLOSED.  
WE WILL SEND YOU VOLUME ONE. EACH ADDITIONAL VOLUME THE SAME PRICE!

**HELP US TO HELP YOU!**

WE ARE MORE THAN HAPPY TO ANSWER E-MAIL INQUIRES HOWEVER, DUE TO MAILING COST AT \$0.46 CENTS A LETTER, PLEASE ENCLOSE AN SASE WITH YOUR QUESTIONS, OTHERWISE NO REPLIES!

**WHAT ABOUT OUR PRICES AND POLICIES**

COLOR PRINTS ON 4x6 GLOSSY PHOTO PAPER AS LOW AS \$0.35 CENTS PER PRINT ON ORDERS OVER 500 SHIPPED ACCORDING TO POLICY: 25 PICTURES PER ENVELOPE EVERY 24 HOURS. S&H \$2.00 PER ENVELOPE.

**METHOD OF PAYMENT/CONTACT INFORMATION**

U.S. POSTAL SERVICE MONEY ORDERS-STATE & FEDERAL CORRECTIONAL INSTITUTIONAL CHECKS

**PAYABLE ONLY TO: KRASNYA L.L.C.**

EQUATION FOR FIRST CLASS U.S. FOREVER STAMPS

BRAND NEW FLAT BOOK FOR ALL ORDERS AT THE RATE OF \$6.00 PER FLAT BOOK.

WE RESPOND TO OUR CLIENTS NEEDS AND TRY TO HELP THE BEST WE CAN.

**OUR SEASONAL SPECIALS MEAN A KICKOFF OF SAVINGS!**

**COLOR CATALOG DISCOUNT SALE**  
ONE COLOR CATALOG OF 120 BABES  
IN CLASSIC OR NUDE LINES \$4.50

PLEASE INCLUDE

A SELF-ADDRESSED STAMPED  
(2-FIRST CLASS STAMPS) ENVELOPE.

QUANTITY BUYS:

5-14 CATALOGS =10% OFF OUR REGULAR PRICE  
15 CATALOGS =15% OFF OUR REGULAR PRICE  
20 CATALOGS =20% OFF OUR REGULAR PRICE  
25 CATALOGS =25% OFF OUR REGULAR PRICE  
30 CATALOGS =30% OFF OUR REGULAR PRICE  
35 CATALOGS =35% OFF OUR REGULAR PRICE  
40 CATALOGS =40% OFF OUR REGULAR PRICE  
45 CATALOGS =45% OFF OUR REGULAR PRICE  
50 CATALOGS =50% OFF OUR REGULAR PRICE  
BE SURE TO SPECIFY CLASSIC OR NUDE BABES!

150 VOL. OF KRASNYA BABES CLASSIC LINE  
150 VOLUMES OF KRASNYA BABES NUDE LINE

**\$24.95 S&H FREE**  
**FOR GRAB BAG OF**  
**50 PHOTOS**  
**FROM ALL OUR CATALOGS**  
**SPECIFY RACE AND MAIN**  
**AREA OF YOUR INTERESTS**  
**WE WILL PICK SELECTION**  
**FOR YOU**  
**BONUS 1 COLOR CATALOG**  
**PAGE OF 120 BABES**

**LOOSE STAMPS FOR LOOSE BABES**

KRASNYA LOOSE STAMP GRAB BAG SPECIAL

10 LOOSE BABES.....30 STAMPS  
25 LOOSE BABES.....75 STAMPS  
50 LOOSE BABES.....150 STAMPS  
ALL STAMPS MUST BE 1ST CLASS STAMPS

IN LIKE NEW CONDITION!

SPECIFY NUDE OR BOP-SAFE (NO VISIBLE NUDITY)  
WE WILL PICK SELECTION FOR YOU

**KRASNYA BABES HAS SPRUNG SALE!**

FREE SAMPLE CATALOG FROM KRASNYA!

120 BABES IN EACH CATALOG

ENCLOSE ONE SASE WITH TWO FIRST  
CLASS STAMPS! 1 CAT PER CUSTOMER  
PLEASE SPECIFY MALE OR FEMALE BABES  
NUDE OR BOP-FRIENDLY

WE'D LIKE TO START THE HOLIDAYS RIGHT THIS YEAR!  
THE WAY TO DO THAT IS BY SENDING YOU INCREDIBLE VALUES  
IT'S ONE THING TO TALK THE TALK, ANOTHER TO WALK THE TALK

50 GREAT BABES 0.50 CENTS EACH!—\$25.00  
100 GREAT BABES 0.45 CENTS EACH!—\$45.00  
200 GREAT BABES 0.40 CENTS EACH!—\$80.00  
300 GREAT BABES 0.40 CENTS EACH!—\$120.00  
500 GREAT BABES 0.35 CENTS EACH!—\$175.00

STANDARD TERMS & CONDITIONS APPLY – \$2.00  
PER ENVELOPE (25 PHOTO) FOR SHIPPING AND HANDLING!

WAIT!

YOU SAY YOU DON'T HAVE ENOUGH BABE CHOICES  
OR CATALOGS? YOU NEED CATALOGS?  
PREPAY YOUR ORDER AND WE WILL SEND YOU  
FREE COLOR CATALOGS!  
GREAT DEAL, BUT HOW MANY CATALOGS?

FOR EVERY 100 BABES WE'LL SEND YOU  
240 BABES TO CHOOSE FROM!

ORDER

50 BABES.....ONE SINGLE CATALOG  
100 BABES.....ONE DOUBLE CATALOG  
200 BABES.....TWO DOUBLE CATALOGS  
300 BABES.....THREE DOUBLE CATALOGS  
500 BABES.....FIVE DOUBLE CATALOGS

3 BRAND NEW FLAT BOOKS OF FOREVER  
STAMPS FOR GRAB BAG OF 45 PHOTOS  
FROM ALL OUR CATALOGS. SPECIFY RACE  
AND MAIN AREA OF YOUR INTERESTS  
WE WILL PICK SELECTION FOR YOU  
BONUS 1 COLOR CATALOG OF 120 BABES  
PLEASE INCLUDE 6 FOREVER STAMPS  
WITH YOUR ORDER FOR S&H

KRASNYA L.L.C.

P.O. BOX 32082

BALTIMORE, MD 21282

EMAIL AND CORRLINKS REQUESTS ACCEPTED AT:  
KRASNYABABES@HOTMAIL.COM

KRASNYA IS PROUD TO INTRODUCE AT FANTASTIC INTRODUCTORY PRICES  
THE CONNOISSEUR'S COUTURE "CACHE TWO-FIVE COLLECTION"  
OF INTERNATIONAL ADULT FILM STARS  
TWELVE PACKAGES OF 25 NUDE AND NON-NUDE POSES,  
AVAILABLE ONLY IN OUR "CACHE TWO-FIVE" COLLECTION.

"CACHE TWO-FIVE"

"CACHE TWO-FIVE" IS AVAILABLE IN TWELVE (12) SPECIALLY PRICED PACKAGES  
OF 25 POSES IN NUDE AND NON-NUDE POSES.

PLEASE SPECIFY ON YOUR ORDERS IF YOU WANT NUDE OR NON-NUDE PACKAGES  
AND WHAT COLLECTION NUMBER YOU'D LIKE.

COLLECTIONS ARE NUMBERED 01-12 FOR EXAMPLE ON YOUR ORDER YOU'D WRITE:

\*\*\*NUDE CACHE TWO-FIVE PACKAGE 01 & 02\*\*\*

REMEMBER THERE ARE TWELVE (12) COMPLETELY DIFFERENT PACKAGES OF 25 BABES,  
THERE ARE NO DUPLICATES IN ANY OF THE 12 PACKAGES.

600 BEGUILING BEAUTIES, ALL BRAND NEW ADDITIONS TO OUR LINE AND AVAILABLE ONLY  
IN OUR CACHE "TWO-FIVE" PACKAGES! 300 NUDES AND 300 NON-NUDE BEAUTIES

CAPTURE YOUR OWN COLLECTION OF KRASNYA'S "CACHE TWO-FIVE" SELECTIONS IN  
INDIVIDUALIZED PACKAGING OF 25 RARE AND EXQUISITE BREATH-TAKING BEAUTIES.

THE CONNOISSEUR'S COUTURE COLLECTION OF "CACHE TWO-FIVE" BRINGS YOU  
25 BEAUTIES IN EACH "CACHE TWO-FIVE" PACKAGE FOR ONLY \$12.95 PER PACKAGE

LIMITED TIME SPECIAL \*\*\*\*\* \$59.95\*\*\*\*\*

PLUS S&H FOR 6 "CACHE TWO-FIVE" PACKAGES OF THE NUDE OR NON-NUDE COLLECTIONS  
150 BEAUTIES

IMAGINE 150 OF THESE EXCITING AND EXQUISITE BEAUTIES

FOR A RIDICULOUSLY LOW PRICE OF

\*\*\*\*\*\$59.95\*\*\*\*\* PLUS \$12.00 SHIPPING AND HANDLING CHARGE.

ADD \$2.00 FOR SHIPPING AND HANDLING PER "CACHE TWO-FIVE" PACKAGE ORDERED.

YOU MUST SPECIFY NUDE OR NON-NUDE PACKAGES

IF NOT SPECIFIED NON-NUDE WILL BE SHIPPED AUTOMATICALLY

ALL OF OUR NORMAL POLICIES APPLY

**FOR KRASNYA CLIENTS WHO WORK THE YARDS;**  
**HAVE WE GOT A GREAT OPPORTUNITY FOR YOU...GRAB BAG**  
**MR. HUSTLE GRAB BAG BARGAIN DAYS**

ONLY \$0.25 CENTS PER BABE

5 GRAB BAG MINIMUM PURCHASE REQUIRED

\$2.00 SHIPPING AND HANDLING PER BAG

25 AWESOME BABES PER BAG AT ONLY \$6.25 PER BAG

YOU MUST BUY AT LEAST 5 GRAB BAGS OR 50 GRAB BAGS.

THIS\*\*\*GRAB BAG BARGAIN\*\*\* IS NOT GOING TO BE OFFERED

AGAIN THIS YEAR. **SO STOCK UP NOW!**

AS YOU KNOW YOU GET AN ARRAY OF 25 GORGEOUS BABES

YOU CAN ONLY CHOOSE EITHER MALES OR FEMALES,

ALL NUDES OR BOP SAFE...THE INDIVIDUAL SELECTIONS COME  
FROM OUR BEST CATALOGS!!!

YOU MAY WANT TO SIT DOWN FOR THIS BONUS BARGAIN!

OUR BABES CATALOGS SPECIAL OF THE DECADE

— 5 COLOR CATALOGS FOR \$6.00 —

— 10 COLOR CATALOGS FOR \$12.00 —

— 15 COLOR CATALOGS FOR \$18.00 —

— 20 COLOR CATALOGS FOR \$24.00 —

OUR CATALOGS SPECIAL AVAILABLE WHEN YOU PURCHASE  
THE 5 GRAB BAG MINIMUM!

THIS PRICE INCLUDES FREE SHIPPING ON THE CATALOGS

BECAUSE OF SHIPPING TERMS ALL CATALOGS SOLD IN

MULTIPLES OF 5 FOR \$6.00 ONLY.

YOU CHOOSE EITHER MALE OR FEMALE CATALOGS

AND IF YOU WANT NUDE OR BOP SAFE!!

# U.S. Sentencing Commission Approves Retroactivity for Drug Offense Sentence Reductions

by Derek Gilna

IT'S ALWAYS HARD FOR THE FEDERAL government to admit its mistakes, especially when they have ruined tens of thousands of lives, devastated inner-city neighborhoods and cost taxpayers billions of dollars. But a recent vote by the U.S. Sentencing Commission to make sentence reductions for certain non-violent drug offenders retroactive is certainly a step in the right direction.

The Commission's July 18, 2014 decision will affect an estimated 20% of federal prisoners and thousands of defendants currently awaiting sentencing, by making retroactive a two-level reduction "in the sentencing guideline levels applicable to most federal drug trafficking offenders." The Commission had voted in April to lower the sentencing guideline levels.

"This amendment received unanimous support from commissioners because it is a measured approach," remarked Sentencing Commission Chairwoman Patti B. Saris. "It reduces prison costs and populations, and responds to statutory and guidelines changes since the drug guidelines were initially developed, while safeguarding public safety."

According to Families Against Mandatory Minimums (FAMM), over 65,000 people submitted public comments to the Commission in support of applying the sentence guideline reductions retroactively.

"This is a milestone in the effort to make more efficient use of our law enforcement resources and to ease the burden of our overcrowded prison system," said Attorney General Eric Holder, Jr., who had

originally sought a more limited change to the sentencing guidelines.

U.S. Senator Patrick Leahy, one of the co-sponsors of the Smarter Sentencing Act of 2014 (S.1410), a bill pending in Congress that would provide additional sentencing relief, commented that the Commission's vote was "an important step toward responsibly addressing our unsustainable prison population."

Unless Congress acts to block the Sentencing Commission's decision, eligible prisoners can begin filing motions to reduce their sentences starting November 1, 2014. Even if such motions are granted, however, no offenders will be released until at least one year after that date. The delay will give the Bureau of Prisons and the federal courts time to prepare for a flood of prisoners petitioning for reduced prison terms.

"More than 46,000 offenders would be eligible to seek sentence reductions in court," the Commission announced. "These offenders' sentences could be reduced by 25 months on average."

With certain exceptions, the sentenc-

ing guideline changes will only apply to federal prisoners convicted of specified drug offenses whose base offense level was 13 to 37; they will not affect those who are serving mandatory minimums or were sentenced as career offenders.

Further, the Sentencing Commission's retroactivity decision will not be an automatic process, just as sentence reductions for crack cocaine offenses were not automatic under the Fair Sentencing Act of 2010. [See: *PLN*, Sept. 2010, p.26]. The Commission's order is still subject to interpretation by the courts, which will decide if prisoners seeking relief are eligible for sentence reductions.

"Each drug offender is going to have to be evaluated individually in order to determine whether or not as a result of dangerousness or otherwise his or her sentence should be reduced," said Commissioner and U.S. District Court Judge Ketanji Jackson. ■

Sources: [www.ussc.gov](http://www.ussc.gov), [www.nationallawjournal.com](http://www.nationallawjournal.com), [www.famm.org](http://www.famm.org), *Los Angeles Times*

## Ninth Circuit: Prisoner's Service of Process for Other Prisoner Not Protected Conduct

by Mark Wilson

ON SEPTEMBER 10, 2013, THE NINTH Circuit Court of Appeals affirmed the dismissal of a prisoner's retaliation claim, holding that serving a summons for another prisoner is not constitutionally protected conduct.

Hawaiian prisoner Richard H. Blaisdell was incarcerated at the Saguaro Correctional Center, a prison in Arizona operated by Corrections Corporation of America (CCA). Since 2007 he has filed at least three lawsuits against prison officials.

On April 23, 2008, Blaisdell asked CCA classification supervisor Christina Frappiea to notarize a document for a lawsuit he planned to file against the facility. When she finished, Blaisdell announced that she had been "served" and handed her an unrelated summons and federal civil

complaint prepared by another prisoner, Anthony Gouveia.

The complaint concerned Frappiea's refusal to notarize a document related to a lawsuit Gouveia had filed in Mississippi. Blaisdell was not a party to that suit and had agreed to serve process for Gouveia.

Blaisdell and Frappiea argued about whether he had the right to serve her. She then issued disciplinary reports against Blaisdell, charging him with "Conspiracy" for agreeing to possess Gouveia's summons and complaint, "Failure to Follow Rules" by possessing another prisoner's property and "Violation of Federal, State or Local Laws" for failing to comply with Arizona's legal requirements for process servers and the Prison Litigation Reform Act's screening provisions of 28 U.S.C. § 1915A prior to attempting service.

\*\*\*\*7DAY FREE TRIAL\*\*\*\*

INMATE EMAIL NEWS + SERVICES

BOP INMATES - CORRLINKS USERS

DAILY EMAILS + UPDATES ON SPORTS

NEWS, MUSIC, ENTERTAINMENT - TV

TONIGHT'S MOVIE AND SPORTS GUIDE

INFO@FORTHESCOOP.COM

P.O. BOX 90594

SAN ANTONIO, TX 78209



A CCA disciplinary hearing officer found Blaisdell guilty of the charges and imposed a sanction of 60 days in administrative segregation.

Blaisdell filed suit in Arizona state court, but the case was removed to federal court. He alleged the discipline was retaliatory and sought damages totaling \$10,000.

On initial screening, the district court interpreted Blaisdell's claim as alleging retaliation for having attempted to serve Gouveia's lawsuit, as well as a claim that "Frappiea had prepared the disciplinary charge 'to get even' with Blaisdell for his own prior lawsuits against CCA and its officers."

The district court granted summary judgment to the defendants, concluding that Blaisdell's service of process was not constitutionally protected conduct. It also noted that Blaisdell had expressly disclaimed that the retaliation was due to his own litigation activity.

The Ninth Circuit affirmed, first rejecting Blaisdell's attempt to void his statement waiving his own prior litigation as the reason for retaliation by Frappiea.

The appellate court then found that

Blaisdell was not engaged in protected conduct when he attempted to serve Gouveia's complaint. Resolving that issue required it "to wade into doctrinal waters not often explored in detail by courts."

The Court of Appeals rejected Blaisdell's argument that his conduct was protected by his constitutional right "to pursue 'litigation-related activities.'" The appellate court held that "while Gouveia and Blaisdell each have an access-to-courts right to file litigation from prison, they cannot vicariously assert that protection on each other's behalf."

Relying on *Johnson v. Avery*, 393 U.S. 483 (1969), Blaisdell argued that he had a right to provide "affirmative legal assistance to his fellow inmate." The Court of Appeals disagreed, finding that "close inspection of *Johnson* and its progeny illustrates that... Blaisdell misconceives the true nature of the right to assistance." In *Johnson*, prison officials "failed to provide any other mechanism for helping inmates who were incapable of preparing legal papers themselves." In contrast, CCA's policy "provides for a law library and for contract attorneys or paralegals." Blaisdell did not challenge

the sufficiency of either, and acknowledged that the Federal Rules of Civil Procedure provide for alternative methods of service.

Based on *Rizzo v. Dawson*, 778 F.2d 527 (9th Cir. 1985), Blaisdell also contended that his conduct was protected by "the freedom of association for the advancement of beliefs and ideas" recognized in *NAACP v. Button*, 371 U.S. 415 (1963).

The Ninth Circuit found *Rizzo* was not controlling because Blaisdell had not engaged in the kind of activity which *Rizzo* held was protected. It also refused to extend *Rizzo* to service of process.

Although the appellate court did not – and could not – overrule *Rizzo*, it wrote that "its holding is difficult to square with the Supreme Court's subsequent teachings on prisoners' rights."

In conclusion, "Because of questions about *Rizzo*'s vitality, the general incompatibility between prison and free association, and because there is no evidence of expressive association," the Court of Appeals held "that the First Amendment does not protect Blaisdell's attempted service of process on Frappiea." See: *Blaisdell v. Frappiea*, 729 F.3d 1237 (9th Cir. 2013). ■

**William L Schmidt**  
ATTORNEY at LAW, P.C.

[911CIVILRIGHTS@GMAIL.COM](mailto:911CIVILRIGHTS@GMAIL.COM)

**559.261.2222 (clients only collect)**

**Legal Services for California Inmates:**

**APPEALS**

**WRITS OF HABEAS CORPUS**

**Civil Litigation**

**Catastrophic Injury Litigation**

**Money Management**

**Business Windup**

**Contracts**

CIVIL RIGHTS-SECTION 1983-FEDERAL AND STATE  
APPEALS AND WRITS- ONLY COMPLEX AND UNIQUE CASES  
PRISON-TRANSFER-DISCIPLINE-VISITING-CLASSIFICATION-HOUSING  
PROP. 36 RE-SENTENCING-3 STRIKES-MEDICAL-PAROLE HEARINGS

-----OUR CLIENTS GO HOME, HOW ABOUT YOU? -----  
*Please submit a single page summary of your case. Due to the volume, we cannot return documents or respond to all inquires. We are not a low cost or pro bono law firm, but if you want results, write us.*

**P.O. BOX  
25001  
FRESNO, CA  
93729**

## Texas Correctional Industries: Providing Useful Work Skills or Slave Labor?

**W**ITH FACTORIES EMPLOYING MORE than 5,000 prisoners at 37 facilities, mostly in the eastern part of the state, Texas Correctional Industries (TCI) is a large and diversified operation. However, critics question the relevance of the job skills that prisoners learn, and even TCI has acknowledged slow progress in modernizing its industry programs.

Established by state law in 1963, TCI manufactures a wide selection of goods that range from furniture and garments to refurbished computers. TCI also operates soap and detergent factories, metal fabrication facilities, sign shops, and boot and shoe manufacturing plants, and produces bedding, janitorial supplies, Texas state flags and, of course, license plates. Industry programs also include tire repair and retreading, printing services, renovating school buses and Braille transcription.

TCI provides goods and services to “city, county, state and federal agencies, public schools, public and private institutions of higher education, public hospitals and political subdivisions.”

Critics claim that many of the job skills learned by prisoners in TCI industry programs will be virtually useless after they’re released because they involve outdated techniques or industries that are scarce in Texas. For example, there are relatively few soap and detergent plants or

flag manufacturers in the state. Or license plate factories.

Those supportive of TCI counter that the most important skill learned may simply be how to keep a job, because 40% of the prisoners who work in TCI programs have never been employed outside of prison. Additionally, TCI’s Offender Work & Training Programs Division offers opportunities for eligible prisoners to “learn specialized, technical job skills and earn national certifications,” according to the agency’s website.

One TCI operation that encompasses modern technology is the computer recovery program, consisting of two computer repair labs – one at the Wynne Unit in Huntsville and the other at the Daniel Unit in Snyder. Prisoners repair, refurbish or recycle up to 125 tons of computers and electronic equipment each month.

“You can tell the age of the computers by how yellow they are,” said TCI computer repair shop supervisor Bob Stoudt, who noted that many schools are desperate to keep old computer systems in working condition because they are unable to afford new ones.

TCI boasts that it “benefits the state of Texas by generating cost savings by providing quality products and services to the Texas Department of Criminal Justice and other eligible agencies and political subdivisions of the state.”

But complaints about the program center on the long hours worked by prisoners, often in industries that do not translate to marketable job skills, for no pay while under the watchful eye of prison guards and the threat of discipline if they do not work. Critics say such an artificial environment is hardly a model for success in the job market outside prison.

Only a small number of Texas prisoners receive wages for their labor – those who participate in the TCI’s Prison Industry Enhancement (PIE) Certification Program, a partnership between the Texas Department of Criminal Justice and private companies. Prisoners employed in PIE programs manufacture goods that are sold on the open market.

Two PIE programs, both based at the Lockhart Unit, produce AC parts and heating valves for Henderson Controls, Inc., and computer boards and wire harnesses for OnShore Resources. As of December 31, 2013, a total of 110 Texas prisoners were employed in PIE programs (around 2% of TCI workers), earning wages that range from \$7.78 to \$10.28 per hour.

According to TCI, deductions are withheld from the paychecks of PIE workers for “taxes, room and board, dependent support, restitution, and a contribution to a crime victims’ fund.” The PIE program was implemented in Texas in 1993 and,



**Serving You with Excellence Since 2009**

**We make it simple.**

**You reach your loved ones by calling a local number.**  
**That's a lot cheaper than calling long distance. *It's that simple!***

- We charge \$2.50 per month for the number.
- For Calls to anywhere in the U.S., we charge you 5¢ per minute
- To Mexico - 15¢; to Canada - 11¢, to just about anywhere else in the world - 31¢
- No Contract, No Credit Check, No Setup Fee, No Cancellation Fee, No Early Termination Fee
- Cancel anytime; any money left on the account is refunded

**Any time you refer a new customer and they sign up, you both get 300 free minutes!**  
Some restrictions apply. Details upon request.

**Tell Your Folks to Sign Up at [www.freedomline.net](http://www.freedomline.net)**

**Or Mail: FreedomLine**  
PO Box 7 - SCA  
Connersville, IN 47331

**Also see our long-running Classified Ad in this and every issue**

**FCC Reg. No. 0021217047**

since then, nearly \$20 million has been returned to the state through deductions from prisoners' wages.

Prison manufacturing has a long history in Texas. The first Texas prison was opened in Huntsville in 1849; four years later, it had been equipped with a textile plant where prisoners could process 500 bales of cotton and three tons of wool per year. In the modern version of that industry

program, today Texas prisoners manufacture tens of thousands of shirts and pairs of socks, pants and underwear each month in TCI textile factories, which significantly reduces clothing expenses for the state prison system.

Still, critics maintain that TCI uses prisoners as the equivalent of unpaid slave workers who toil under the constant threat of punishment, which reduces the likeli-

hood that such industry programs will convert them into competent, motivated employees following their release. The best that can be hoped, opponents argue, is that some prisoners might learn good work habits, such as showing up for their jobs on time and putting in a full day's labor. ■

Sources: *Houston Chronicle*, [www.tci.tdcj.state.tx.us](http://www.tci.tdcj.state.tx.us), interviews with Texas prisoners

## South Carolina Supreme Court Reverses Parole Denial

by Michael Brodheim

THE SUPREME COURT OF SOUTH CAROLINA, exercising the sort of common sense not found in the courts of more "liberal" states like California, held on July 3, 2013 that retroactive application of a law that increases the requirements for parole constitutes an *ex post facto* violation. In so holding, the Court reversed a denial of parole by the Board of Probation, Parole and Pardon Services (Board).

In 1982, after pleading guilty to one count of murder, Thelma Barton was sentenced to life in prison. Beginning in 1997, her application for parole was denied 13 times.

In January 2012, four of the six Board members participating in Barton's parole hearing voted in favor of granting her parole. Ultimately, however, parole was denied because, in the Board's view, section 24-21-645 of the South Carolina Code requires a two-thirds majority vote of the Board's seven members (i.e., five votes rather than

four) before parole may be granted in cases involving violent crimes. The Board cited the "nature, seriousness, and indication of violence of her offense" in denying Barton parole.

Barton appealed the decision, arguing the Board had violated her constitutional rights by not applying the version of section 24-21-645 in effect at the time she committed her offense. That version required only a simple majority (rather than a two-thirds majority) of the Board members to vote in favor of granting parole. In the alternative, Barton argued she had satisfied the current statutory requirements for parole because two-thirds of the Board members who participated in her hearing had voted to grant parole.

The Administrative Law Court affirmed the Board's decision.

The state Supreme Court reversed on appeal, agreeing with both of Barton's arguments in a lengthy and detailed ruling.

"Simply put, prior to the [statutory] amendment, Appellant merely needed to obtain favorable votes from a majority of the Parole Board," the Court wrote. "Following the amendment, Appellant must obtain favorable votes from two-thirds of the Parole Board. This amendment is not procedural, but poses a sufficient risk of increasing the measure of punishment attached to Appellant's crime and other similarly situated individuals."

The Supreme Court concluded "that retroactive application of section 24-21-645 constitutes an *ex post facto* violation, and inmates convicted of a violent crime must only convince two-thirds of the Parole Board members participating in their hearing. Appellant received the requisite number of votes from the Parole Board, and thus, should be granted parole." See: *Barton v. South Carolina Department of Probation, Parole and Pardon Services*, 404 S.C. 395, 745 S.E.2d 110 (S.C. 2013). ■

### LAW OFFICES OF

ELMER ROBERT KEACH, III



Law Offices of Elmer Robert Keach, III, PC  
One Pine West Plaza, Suite 109  
Albany, NY 12205-5531  
518.434.1718  
[www.keachlawfirm.com](http://www.keachlawfirm.com)

Attorney Bob Keach  
NITA Master Advocate  
Member, Multi-Million Dollar Advocates Forum  
Outside Counsel, Prison Legal News

### Experienced Civil Rights Attorney dedicated to seeking justice for those who are incarcerated

*Custodial Death Cases • Wrongful Arrest and Incarceration*  
*Medical Indifference Cases • Corrections and Police Brutality*  
*Sexual Abuse and Assault • Illegal Strip Searches*  
*Class Actions • First Amendment Litigation*

**WHEN YOU OR A LOVED ONE HAVE BEEN WRONGED,  
YOU HAVE A VOICE.**

Attorney Keach prefers all inquiries by mail to be typed, and limited to five pages.  
DO NOT SEND UNSOLICITED RECORDS. THEY CANNOT BE RETURNED.  
Make sure to exhaust your administrative remedies and comply with state law notice requirements, if applicable, to preserve state law intentional tort/negligence claims.

## Update on PLN Suit Against Nevada DOC

**P**RISON LEGAL NEWS CONTINUES ITS efforts to defend its First Amendment right to communicate with prisoners in the Nevada Department of Corrections (NDOC). In 1999 the NDOC banned all copies of PLN, claiming the publication constituted “inmate correspondence.” PLN filed suit and was granted a preliminary injunction requiring delivery of PLN subscriptions and mail to Nevada prisoners. The state entered into a consent decree in September 2000, agreeing that prisoners “shall be permitted to subscribe to the publications of their choice,” subject only to specified security concerns.

However, ongoing censorship of PLN’s monthly magazine and books resulted in a June 2013 lawsuit in which PLN seeks to enjoin the unconstitutional censorship of its publications by prison officials. [See: *PLN*, Nov. 2013, p.18]. In conjunction with the lawsuit, PLN also filed a motion for an order to show cause in the prior suit, seeking to hold the NDOC in contempt for violating provisions of the 2000 consent decree by enacting and enforcing policies that continue to censor PLN’s monthly publication and book orders sent to Nevada prisoners. The federal district court later consolidated the two cases.

On June 17, 2014, the NDOC filed a motion to dismiss PLN’s suit, claiming a revised mail policy (AR 750) resolved any constitutional issues with the old mail policy. The court has not yet ruled on the motion; a jury trial in the case is scheduled

for January 27, 2015. See: *PLN v. Cox*, U.S.D.C. (D. Nev.), Case No. 3:00-cv-00373-HDM-WGC.

PLN relies on information we receive from prisoners to assist us in our litigation, and we invite Nevada readers to contact us concerning censorship of mail and books at NDOC facilities. Specifically, whether pris-

oners receive notice when mail is withheld or censored, whether they have participated in an appeals process, and if they are receiving book orders without “pre-approval.” Nevada prisoners can contact us in these regards at: Prison Legal News, Attn: NV DOC Suit, P.O. Box 1151, Lake Worth, FL 33460. 📧

## ACLU Granted Preliminary Injunction Requiring Michigan Jail to Deliver Legal Mail

by David Reutter

**A**FEDERAL DISTRICT COURT IN MICHIGAN granted a preliminary injunction that requires officials at the Livingston County Jail (LCJ) to deliver letters sent by the ACLU to specific prisoners and to return the mail if a prisoner is no longer in custody. The defendants appealed and the Sixth Circuit declined to stay the injunction.

The ACLU filed a lawsuit in March 2014, which was assigned as a companion case to *Prison Legal News v. Livingston County Sheriff Bob Bezotte*, U.S.D.C. (E.D. Mich.), Case No. 2:11-cv-13460-DPH-MAR. [See: *PLN*, Sept. 2011, p.19].

Both PLN and the ACLU are challenging the constitutionality of the LCJ’s postcard-only mail policy. The ACLU alleged that jail officials violated the First Amendment by blocking and reading its letters sent to prisoners; it also asserted due process violations.

While the LCJ’s mail policy includes procedures for legal mail, the ACLU said the jail “does not allow ACLU attorneys to write letters to inmates regarding the constitutionality of the conditions of confinement including letters that would address the constitutionality of the postcard-only policy itself.” Additionally, LCJ officials failed to “notify either the ACLU or the inmates to whom the legal mail is addressed that the mail was not being delivered to its intended residents and ... opened, read, and shared the legal mail sent by an ACLU attorney to an inmate who no longer resides at the jail.”

In an effort to obtain information from prisoners concerning the jail’s postcard-only policy, the ACLU had sent 25 letters clearly marked “Legal Mail” to individually-named LCJ prisoners. The letters and a form to complete and return to the ACLU were

### Support Prison Legal News with these beautiful gifts!

CALL 561-360-2523, MAIL ORDER OR USE WEB FORM

[HTTP://WWW.PRISONLEGALNEWS.ORG/](http://WWW.PRISONLEGALNEWS.ORG/)



### Hand Embroidered Greeting Cards



Made by women prisoners in Cochabamba, Bolivia. Each card is individually made, no two are identical. The prisoners are paid a fair wage for each card and keep 100% of the pay to support themselves and their families. Local fair trade non-profits in Bolivia supply the materials for the cards. **\$6.**

**Hand Made Hemp Tote Bag** All natural hemp tote bag hand made in Vermont with the Prison Legal News logo on both sides, in red and black. Great for carrying books, groceries, and more! Stamped on the inside that no sweatshop, prison or child labor was used in its manufacture. **\$12.**

\$6 shipping and handling for orders under \$50.



received at the jail on or about February 21, 2014. No responses were received.

In a deposition taken in PLN's case, an LCJ official testified that the jail does not "deliver mail sent by an attorney to an inmate unless the mail is sent by the inmate's 'attorney of record' on an ongoing court case." Further, mail from lawyers outside the county who write to four or five prisoners and letters from attorneys that the LCJ considers to be a "mass mailing" are not delivered. Finally, a letter sent by the ACLU to a prisoner no longer housed at the LCJ was opened, read and scanned, and sent to an attorney representing the jail. That attorney then filed the letter in a pleading entered on the court's public docket.

LCJ officials claimed the ACLU was trying to "solicit inmates for the furtherance of [its] own political agenda."

The ACLU moved for a preliminary injunction to protect its First Amendment right to communicate with prisoners at the jail, and the motion was granted in May 2014.

"A prisoner's interest in unimpaired, confidential communication with an attorney is an integral component of the

judicial process and mail from an attorney implicates a prisoner's protected legal mail rights," the district court wrote. See: *ACLU of Michigan v. County of Livingston*, U.S.D.C. (E.D. Mich.), Case No. 2:14-cv-11213-DPH-RSW.

The defendants filed an interlocutory appeal and requested a stay of the court's order. The Sixth Circuit denied the motion for a stay on July 10, 2014 after considering "the same four factors a district court considers when granting a preliminary injunction."

Citing *Procurier v. Martinez*, 416 U.S. 396 (1974), *rev'd in part on other grounds*, *Thornburgh v. Abbott*, 490 U.S. 401 (1989), the Court of Appeals wrote that "[b]oth parties to the correspondence have an interest in securing [the communication], and censorship of the communication between them necessarily impinges on the interest of each."

The Sixth Circuit noted that unlike mail from private attorneys and courts, it had "never squarely addressed whether mail from the ACLU is 'legal mail.' But, on balance, our precedent suggests that it would be, provided that it is from a licensed attorney and designated as privileged infor-

mation. The envelopes in this case contained clear statements that they were from a licensed Michigan attorney and that they were legal mail."

Concluding the defendants would not be irreparably harmed if they were required to deliver the ACLU's letters sent to individual prisoners and to return (rather than opening and reading) mail addressed to prisoners no longer held at the LCJ, the Court of Appeals denied a stay of the district court's preliminary injunction order. See: *ACLU of Michigan v. County of Livingston*, Sixth Circuit Court of Appeals, Case No. 14-1617.

The lawsuits filed against the LCJ by Prison Legal News and the ACLU of Michigan both remain pending. ■

Additional source: [www.thealpenanews.com](http://www.thealpenanews.com)

### Roget's Thesaurus

Can't think of the right word?  
Let Roget's help you! Over 11,000  
words listed alphabetically.  
See page 61 for more information.

- \* *Post-Conviction Specialists (Habeas Corpus/2254/2255/AEDPA/Procedural Bars/Coram Nobis/PRP/Certiorari/Sentence Modifications/DNA and more).*
- \* *All 50 States, D.C., Federal District/Appellate and Supreme Court.*
- \* *Special programs available for Veterans.*
- \* *Payment plans available.*
- \* *Now accepting Credit Cards.*
- \* *FREE initial consultation (send SASE)*
- \* *CALIFORNIA INMATES: We do 2-3 striker VARGAS petitions*
- \* *FEDERAL INMATES: We do "Drugs Minus Two" Petitions which are RETROACTIVE!*
- \* *SPECIAL RATES FOR PLN SUBSCRIBERS!*

### Legal Insights Inc.

25602 Alicia Parkway Suite 323

Laguna Hills, CA 92653

714-941-0578

[info@legalinsights.org](mailto:info@legalinsights.org)

[www.legalinsights.org](http://www.legalinsights.org)

A California 501(c)(3) Non-Profit Organization

## Learn The Law!

It's a POWERFUL influence in your life.

Choose education to help yourself and others. Blackstone's Independent Study Paralegal Program offers you the opportunity to be productive while serving time.

- Learn Civil & Criminal Law
- Learn Legal Research
- 110 Years of Legal Training Experience
- Study in Your Spare Time
- Affordable Tuition, Easy Payment Plan

Only  
**\$30.00**  
Per Month

☐ **Yes! I'd like to learn more** ☐ **Paralegal Course**  
Please rush me **FREE** course information.

Name \_\_\_\_\_ Doc# \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**Blackstone**  
**Career Institute**

Your tuition cost covers your entire program including all textbooks, study guides, exam and homework evaluation services, and your certificate.

P.O. Box 3717 • Allentown, PA 18106

# Reversal of Oregon Parole Postponement Due to Incorrect Psychological Evaluation

by Mark Wilson

**T**HE OREGON COURT OF APPEALS HAS held that a prisoner's release was improperly postponed for two years on the basis of an erroneous psychological evaluation report.

Oregon law provides for enhanced "dangerous offender" sentences upon a finding that a defendant suffers "from a severe personality disorder indicating a propensity toward criminal activity." The Board of Parole & Post-Prison Supervision (Board) then establishes a parole consideration hearing date rather than a parole release date.

If the Board finds at a parole consideration hearing that the condition which made the prisoner dangerous is absent or in remission, it must order the prisoner's release. If the condition is found to still be present, the Board may postpone parole consideration for a minimum of two years and a maximum of 10 years.

To assist the Board in making this determination, prisoners are compelled to submit to psychological evaluations by Board-contracted psychologists who are paid for each evaluation. Independent evaluations typically cost \$1,500 to \$3,000.

Some Board-contracted psychologists interview the prisoner while others don't. Some administer psychological testing, others don't. Some review the prisoner's file and some don't. The prisoner has no right to see a particular doctor or to insist that the evaluation process meet any minimal standards for completeness or reliability. If the prisoner refuses to submit to an evaluation, the Board may postpone parole consideration for ten years or require the prisoner to serve until his or her good time date, which amounts to life without parole in some cases.

The Board does not meet with the psychological examiners or call them to testify at parole consideration hearings, "because this a hearing, not a trial," said former Board Chairman Steven Powers. Rather, the Board simply relies upon the evaluation report.

Although the Oregon Supreme Court has held that prisoners have a protected liberty interest in their parole release dates and the postponement of release constitutes a "substantial deprivation of liberty," the Board maintains a blanket ban on witnesses,

prohibiting prisoners from calling their own witnesses or confronting or cross-examining the Board-contracted psychologists about the content of their reports.

In 1988, Nghia Gia Dam was convicted of 15 counts of first-degree robbery and sentenced as a "dangerous offender." The Board established a September 3, 2008 parole consideration date and ordered Dam to submit to a psychological evaluation by Board-contracted psychologist F. Robert Stuckey.

Stuckey's evaluation consisted of an interview with Dam and a review of the written record, including a presentence investigation report (PSI) and a report of Dam's conduct while incarcerated.

The PSI that Stuckey relied upon contained numerous significant factual errors. It reported that Dam had a 1975 criminal conviction in the U.S., even though he had first entered the country in 1980. It also incorrectly listed seven prior criminal convictions and dispositions that were not a part of Dam's criminal history, including three drug convictions, two domestic violence convictions (when he had only one), a theft conviction and a conviction for DUI.

Stuckey was not aware of the errors. Instead, in his psychological evaluation report he made several references to, and emphasized, the erroneous information as evidence that Dam was "minimizing" his criminal behavior, which supported his conclusion that Dam "did not appear to have a mature, sophisticated, or remorseful attitude regarding his criminal behavior." Based on that incorrect information, Stuckey found "there was much blame, avoidance, and minimization, and lack of depth understanding with respect to his criminal behavior."

Ultimately, Dr. Stuckey concluded that Dam had "a present severe emotional disturbance such as to constitute a danger to the health and safety of the community."

The Board considered Stuckey's report at Dam's September 3, 2008 parole consideration hearing. Dam objected to the Board's use of the report due to its reliance on the incorrect PSI information. Nevertheless, the Board relied on Stuckey's report to conclude that Dam remained a danger, and postponed his release for two years.

Dam appealed, objecting to the use of Stuckey's report because it was based on incorrect criminal history information in his PSI. The Board denied Dam's appeal, stating, "the Board discussed your concerns about the inaccurate information used by Dr. Stuckey, and present in your presentence investigation, acknowledged the errors and disregarded that information in its own deliberations, as well as taking the matter into account when considering Dr. Stuckey's conclusions."

Although the Board stated it had "taken steps to ensure that the erroneous information is removed from the written record for future hearings," it did "not find that the errors significantly prejudiced [Dam] or caused the psychological evaluation to be unreliable."

Rather, the Board noted that Stuckey gave examples of Dam's statements to support his conclusion that Dam minimized his criminal conduct. It also found independently of Stuckey's evaluation, based upon its own questioning and observation of Dam, that he minimized his criminal conduct.

The Court of Appeals reversed. While it held that "the question is a close one" and there was "evidence at the hearing that supports findings that [Dam] minimizes his crimes and shows little insight into how his criminal acts affected the victims," the appellate court noted that "Stuckey referred repeatedly to [Dam's] criminal history."

"It is impossible to determine the extent to which Stuckey's ultimate conclusion was influenced by the incorrect information in the PSI and by his perception that [Dam] was not being truthful," the Court of Appeals concluded.

"[I]t is clear that the board relied on Stuckey's flawed evaluation," the Court wrote. However, "it is not clear that the board would have reached the same conclusion in the absence of its reliance on the flawed report." As such, the appellate court concluded "that the board's affirmative determination that [Dam] continues to be dangerous is erroneous," and remanded the case for reconsideration. See: *Dam v. Bd. of Parole & Post-Prison Supervision*, 258 Ore. App. 39, 309 P.3d 161 (Or. Ct. App. 2013). ■



Stay in touch with a good Magazine!  
Get 5 Full One Year Subscriptions

**ONLY \$20!**  
+ \$4.99 p&h

Check your 5 magazines and underline three backup choices (in case of unavailability)

**"BEST DEAL ON THE POUND!"**

**July 4 Special!**  
July 1-Sep 31, 2014  
1 FREE Subscription  
per paid 5 for 20 order!!  
Check 6 magazines instead of 5!

- ☐ ALLURE (12)
- ☐ AMERICAN PHOTO (6)
- ☐ ARTHRITIS SELF MANAGEMENT (6)
- ☐ ARTHRITIS TODAY (6)
- ☐ AUTOMOBILE (12)
- ☐ BACKPACKER (9)
- ☐ BETTER HOMES & GARDENS (12)
- ☐ BLACK ENTERPRISE (12)
- ☐ BOATING (10)
- ☐ BOATING WORLD (9)
- ☐ BON APPETIT (12)
- ☐ BOWHUNT AMERICA (6)
- ☐ BOWHUNTING WORLD (9)
- ☐ BRIDAL GUIDE (6)
- ☐ CABELA'S OUTFITTER JOURNAL (6)
- ☐ CAR & DRIVER (12)
- ☐ CHARISMA (12)
- ☐ COMPLEX MAGAZINE (6)

- ☐ CONDE NAST TRAVELER (12)
- ☐ COSMOPOLITAN (12)
- ☐ CRUISING WORLD (12)
- ☐ CYCLE WORLD (12)
- ☐ DETAILS - FASHION (10)
- ☐ DIABETES SELF MANAGEMENT (6)
- ☐ DIGITAL PHOTO (7)
- ☐ DIRT RIDER (12)
- ☐ EBONY (12)
- ☐ ELLE (12)
- ☐ ELLE DECOR (10)
- ☐ ENTREPRENEUR (12)
- ☐ ESQUIRE (10)
- ☐ EVERY DAY WITH RACHAEL RAY (10)
- ☐ FAMILY CIRCLE (12)
- ☐ FAMILY FUN (10)
- ☐ FAST COMPANY (10)
- ☐ FIELD & STREAM (12)
- ☐ FITNESS (10)
- ☐ FLORIDA SPORT FISHING (6)
- ☐ FLYING (12)
- ☐ FOUR WHEEL & OFF ROAD (12)
- ☐ FOUR WHEELER (12)
- ☐ FREESKIER (6)
- ☐ GLAMOUR (12)
- ☐ GOLF DIGEST (12)
- ☐ GOLF TIPS (7)
- ☐ GOLFWEEK (38)
- ☐ GOOD HOUSEKEEPING (12)
- ☐ HARPERS BAZAAR (10)

- ☐ HOT BIKE (12)
- ☐ INC (12)
- ☐ INSTRUCTOR K - 8 (6)
- ☐ ISLANDS MAGAZINE (8)
- ☐ LATINA (10)
- ☐ LIFE EXTENSION (13)
- ☐ LOG HOME LIVING (9)
- ☐ LUCKY (10)
- ☐ MARIE CLAIRE (12)
- ☐ MARLIN (8)
- ☐ MEN'S FITNESS (10)
- ☐ MEN'S JOURNAL (12)
- ☐ MIDWEST LIVING (6)
- ☐ MINISTRY TODAY (6)
- ☐ MORE (10)
- ☐ MOTOR TREND (12)
- ☐ MOTORCYCLIST (12)
- ☐ NATURAL HEALTH (6)
- ☐ NYLON GUYS (6)
- ☐ NYLON MAGAZINE (10)
- ☐ OK! MAGAZINE (52)
- ☐ OLD HOUSE JOURNAL (8)
- ☐ OUTDOOR LIFE (12)
- ☐ OUTDOOR PHOTOGRAPHER (11) NR\*
- ☐ OUTSIDE (12)
- ☐ PARENTS (12)
- ☐ PLANE & PILOT (12) NR\*
- ☐ POPULAR PHOTOGRAPHY (12)
- ☐ POPULAR SCIENCE (12)
- ☐ PREDATOR EXTREME (6)

- ☐ RED BULLETIN MAGAZINE (12)
- ☐ REDBOOK (11)
- ☐ ROAD & TRACK (10)
- ☐ ROLLING STONE (26)
- ☐ SALT WATER SPORTSMAN (10)
- ☐ PARENT & CHILD (8)
- ☐ SELF (12)
- ☐ SEVENTEEN (10)
- ☐ SHAPE (12)
- ☐ SIEMPRE MUJER (6)
- ☐ SKI MAGAZINE (6)
- ☐ SNOWBOARD (4)
- ☐ SPORT RIDER (10)
- ☐ TEEN VOGUE (10)
- ☐ TENNIS (6)
- ☐ THE ATLANTIC MONTHLY (10)
- ☐ TIMBER HOME LIVING (6)
- ☐ TOWN & COUNTRY (10)
- ☐ UPTOWN (6)
- ☐ US WEEKLY (52)
- ☐ VERANDA (6)
- ☐ W MAGAZINE (10)
- ☐ WATERFOWL & RETRIEVER (2)
- ☐ WEIGHT WATCHERS (6)
- ☐ WHITETAIL JOURNAL (6)
- ☐ WIRED (12)
- ☐ WOMAN'S DAY (12)
- ☐ WORKING MOTHER (6)
- ☐ YACHTING (12)
- ☐ YOGA JOURNAL (9)

OK TO COPY

\* No Renewal

"Tell your Friends and Families!"

\*\*\*\*DUE TO PUBLISHER PROCESSING TIMES, WE WILL NOT UNDER ANY CIRCUMSTANCES CHECK WITH ANY PUBLISHER ABOUT THE STATUS OF ANY MAGAZINE SUBSCRIPTION UNTIL AFTER 90 DAYS HAVE PASSED FROM THE DATE OF PROCESSING YOUR ORDER! NO EXCEPTIONS!\*\*\*\*

Name and Inmate # (please print, maximum 24 characters):													
Address:													
City:								State:				Zip:	

Allow 6-8 weeks for delivery. Pay by Check, Money Order or Order Online and use Credit Card or PayPal. Keep Address Short!

P.O. Box 2063, Fort Walton Beach, FL 32549  
www.InmateMagazineService.com



Stay in touch with a good Magazine!  
Get 5 Full One Year Subscriptions

**ONLY \$20!**  
+ \$4.99 p&h

Check your 5 magazines and underline three backup choices (in case of unavailability)

**"BEST DEAL ON THE POUND!"**

**July 4 Special!**  
July 1-Sep 31, 2014  
1 FREE Subscription  
per paid 5 for 20 order!!  
Check 6 magazines instead of 5!

- ☐ ALLURE (12)
- ☐ AMERICAN PHOTO (6)
- ☐ ARTHRITIS SELF MANAGEMENT (6)
- ☐ ARTHRITIS TODAY (6)
- ☐ AUTOMOBILE (12)
- ☐ BACKPACKER (9)
- ☐ BETTER HOMES & GARDENS (12)
- ☐ BLACK ENTERPRISE (12)
- ☐ BOATING (10)
- ☐ BOATING WORLD (9)
- ☐ BON APPETIT (12)
- ☐ BOWHUNT AMERICA (6)
- ☐ BOWHUNTING WORLD (9)
- ☐ BRIDAL GUIDE (6)
- ☐ CABELA'S OUTFITTER JOURNAL (6)
- ☐ CAR & DRIVER (12)
- ☐ CHARISMA (12)
- ☐ COMPLEX MAGAZINE (6)

- ☐ CONDE NAST TRAVELER (12)
- ☐ COSMOPOLITAN (12)
- ☐ CRUISING WORLD (12)
- ☐ CYCLE WORLD (12)
- ☐ DETAILS - FASHION (10)
- ☐ DIABETES SELF MANAGEMENT (6)
- ☐ DIGITAL PHOTO (7)
- ☐ DIRT RIDER (12)
- ☐ EBONY (12)
- ☐ ELLE (12)
- ☐ ELLE DECOR (10)
- ☐ ENTREPRENEUR (12)
- ☐ ESQUIRE (10)
- ☐ EVERY DAY WITH RACHAEL RAY (10)
- ☐ FAMILY CIRCLE (12)
- ☐ FAMILY FUN (10)
- ☐ FAST COMPANY (10)
- ☐ FIELD & STREAM (12)
- ☐ FITNESS (10)
- ☐ FLORIDA SPORT FISHING (6)
- ☐ FLYING (12)
- ☐ FOUR WHEEL & OFF ROAD (12)
- ☐ FOUR WHEELER (12)
- ☐ FREESKIER (6)
- ☐ GLAMOUR (12)
- ☐ GOLF DIGEST (12)
- ☐ GOLF TIPS (7)
- ☐ GOLFWEEK (38)
- ☐ GOOD HOUSEKEEPING (12)
- ☐ HARPERS BAZAAR (10)

- ☐ HOT BIKE (12)
- ☐ INC (12)
- ☐ INSTRUCTOR K - 8 (6)
- ☐ ISLANDS MAGAZINE (8)
- ☐ LATINA (10)
- ☐ LIFE EXTENSION (13)
- ☐ LOG HOME LIVING (9)
- ☐ LUCKY (10)
- ☐ MARIE CLAIRE (12)
- ☐ MARLIN (8)
- ☐ MEN'S FITNESS (10)
- ☐ MEN'S JOURNAL (12)
- ☐ MIDWEST LIVING (6)
- ☐ MINISTRY TODAY (6)
- ☐ MORE (10)
- ☐ MOTOR TREND (12)
- ☐ MOTORCYCLIST (12)
- ☐ NATURAL HEALTH (6)
- ☐ NYLON GUYS (6)
- ☐ NYLON MAGAZINE (10)
- ☐ OK! MAGAZINE (52)
- ☐ OLD HOUSE JOURNAL (8)
- ☐ OUTDOOR LIFE (12)
- ☐ OUTDOOR PHOTOGRAPHER (11) NR\*
- ☐ OUTSIDE (12)
- ☐ PARENTS (12)
- ☐ PLANE & PILOT (12) NR\*
- ☐ POPULAR PHOTOGRAPHY (12)
- ☐ POPULAR SCIENCE (12)
- ☐ PREDATOR EXTREME (6)

- ☐ RED BULLETIN MAGAZINE (12)
- ☐ REDBOOK (11)
- ☐ ROAD & TRACK (10)
- ☐ ROLLING STONE (26)
- ☐ SALT WATER SPORTSMAN (10)
- ☐ PARENT & CHILD (8)
- ☐ SELF (12)
- ☐ SEVENTEEN (10)
- ☐ SHAPE (12)
- ☐ SIEMPRE MUJER (6)
- ☐ SKI MAGAZINE (6)
- ☐ SNOWBOARD (4)
- ☐ SPORT RIDER (10)
- ☐ TEEN VOGUE (10)
- ☐ TENNIS (6)
- ☐ THE ATLANTIC MONTHLY (10)
- ☐ TIMBER HOME LIVING (6)
- ☐ TOWN & COUNTRY (10)
- ☐ UPTOWN (6)
- ☐ US WEEKLY (52)
- ☐ VERANDA (6)
- ☐ W MAGAZINE (10)
- ☐ WATERFOWL & RETRIEVER (2)
- ☐ WEIGHT WATCHERS (6)
- ☐ WHITETAIL JOURNAL (6)
- ☐ WIRED (12)
- ☐ WOMAN'S DAY (12)
- ☐ WORKING MOTHER (6)
- ☐ YACHTING (12)
- ☐ YOGA JOURNAL (9)

OK TO COPY

\* No Renewal

"Tell your Friends and Families!"

\*\*\*\*DUE TO PUBLISHER PROCESSING TIMES, WE WILL NOT UNDER ANY CIRCUMSTANCES CHECK WITH ANY PUBLISHER ABOUT THE STATUS OF ANY MAGAZINE SUBSCRIPTION UNTIL AFTER 90 DAYS HAVE PASSED FROM THE DATE OF PROCESSING YOUR ORDER! NO EXCEPTIONS!\*\*\*\*

Name and Inmate # (please print, maximum 24 characters):													
Address:													
City:								State:				Zip:	

Allow 6-8 weeks for delivery. Pay by Check, Money Order or Order Online and use Credit Card or PayPal. Keep Address Short!

P.O. Box 2063, Fort Walton Beach, FL 32549  
www.InmateMagazineService.com

# Qualified Immunity to Iowa DOC Director for Recalculating Prisoners' Release Dates

by David M. Reutter

**T**HE EIGHTH CIRCUIT COURT OF APPEALS has upheld a district court's grant of qualified immunity in a civil rights action brought by four ex-prisoners who were held beyond their release dates.

The prisoners, Richard Scott, Tim Burney, Kevin Underwood and J'Won Wilder, filed a lawsuit under 42 U.S.C. § 1983 against Iowa Department of Corrections (IDOC) director John R. Baldwin, seeking monetary and injunctive relief. They alleged that Baldwin had failed "to timely recalculate the end dates" of their sentences following the Iowa Supreme Court's decision in *Anderson v. State*, 801 N.W.2d 1 (Iowa 2011). In that case, the Court held that Iowa law requires prisoners to receive credit for time served "for supervision of services."

Within weeks of the *Anderson* ruling, Baldwin knew it would impact "approximately 3,444 offenders." Working some overtime, the IDOC began recalculating each prisoner's release date. The first affected prisoner was freed on August 26, 2011; through December 8, 2011, the IDOC released more than 200 prisoners. The plaintiffs served between 43 and 60 days beyond their release dates.

While it was undisputed that the plaintiffs were held beyond the end of their sentences, the issue was whether Baldwin "reasonably could have believed" the time spent recalculating prisoners' release dates after the ruling in *Anderson* was "lawful in light of clearly established law on the total-

ity of the circumstances."

The Eighth Circuit noted that Baldwin knew which prisoners were affected by *Anderson*, but did not know when to release them without recalculating their sentences. The plaintiffs did not allege that Baldwin had been notified they were being over-detained, or that he detained them after he was aware of their new release dates.

Established law imposed a "duty to investigate" upon Baldwin, but there was

no authority regarding the time he had to recalculate the plaintiffs' sentences. "Under the circumstances," the appellate court concluded, "the law did not fairly warn him that the amount of time spent recalculating thousands of release dates, including the plaintiffs', recklessly disregarded their constitutional right to release." As such, Baldwin was entitled to qualified immunity. See: *Scott v. Baldwin*, 720 F.3d 1034 (8th Cir. 2013). ■

## Seventh Circuit: Routine Erasure of Prison Security Tapes Does Not Warrant Sanctions

by Michael Brodheim

**T**HE SEVENTH CIRCUIT HAS HELD THAT a district court did not abuse its discretion when it denied a prisoner's motion for sanctions based on the erasure of prison security tapes that allegedly would have provided evidence in support of the prisoner's claim that he had been subjected to excessive force. The appellate court held that sanctions are warranted only when evidence is destroyed in bad faith, i.e., "for the purpose of hiding adverse information," and that there was no evidence that the disputed videos had been destroyed for reasons other than routine prison policy.

Larry Bracey, incarcerated at the Wisconsin Secure Program Facility, was injured during an altercation with guards in July 2005. The incident was recorded by prison security cameras but the video footage was

erased when the cameras recorded over it about three days later.

Bracey filed suit in 2010, alleging that the guards had used excessive force against him in violation of the Eighth Amendment. As the trial approached he filed a motion for sanctions, arguing that he was entitled to an adverse inference jury instruction because the security tapes of the incident had not been preserved by prison officials, which, he claimed, constituted spoliation of evidence.

The district court denied Bracey's motion because "none of the individual defendants were involved in the decision not to preserve the video."

Bracey lost at trial and appealed. The Seventh Circuit affirmed, declining Bracey's invitation that it join several other circuits



### FULTON & WELCH

TEXAS PAROLE  
ATTORNEYS

- o AFFORDABLE
- o PERSONALIZED PACKET
- o 2 HEARINGS
- o MEET WITH YOU & FAMILY

"LET US GET YOU HOME SOONER"

10701 Corporate Dr., Ste. 390,  
Stafford, Texas 77477

### Post conviction State and Federal Habeas Corpus petitions

### FOR VIRGINIA ONLY

Full review of case:

**\$2995.00**

Write to:  
Dale Jensen, Criminal Law  
Attorney  
606 Bull Run  
Staunton, VA 24401



or have someone call or go to:  
(540) 324 - 8828  
djensencrimlaw@gmail.com  
www.djensencrimlaw.com



– including the Sixth and Ninth – in adopting a standard that would not condition an adverse inference instruction on a showing of bad faith.

The Court of Appeals also rejected Bracey's challenge to the district court's

denial of his motion to appoint counsel, even though the defendants had refused to produce certain documents in discovery due to "security" concerns which could have been produced had he been represented by counsel. The appellate court noted that

Bracey had other options, including a renewed motion for appointment of counsel and motion to reopen discovery, which he did not pursue. See: *Bracey v. Grondin*, 712 F.3d 1012 (7th Cir. 2013), *rehearing denied*, *cert. denied*. ■

## Fifth Circuit Grants Summary Judgment for Substitution of Pain Medication

**T**HE FIFTH CIRCUIT COURT OF APPEALS has reversed a denial of summary judgment against jail medical officials who substituted ibuprofen for Percocet when treating a prisoner's gunshot wound.

On September 12, 2008, Ronnie Burton was shot in the shoulder during a drive-by shooting. He was taken to a hospital, treated, admitted for a day, prescribed Percocet for pain and released. He was then arrested and taken to the Hinds County Detention Facility in Raymond, Mississippi, where he remained until he was released two days later. During his stay at the jail, Burton was denied Percocet and instead given 800mg of ibuprofen twice a day for pain. He alleged that was insufficient

and he remained in pain.

Burton filed suit in state court alleging a violation of his Fourteenth Amendment right to medical care as a pretrial detainee. The case was removed to federal court. The defendants filed a motion for summary judgment, alleging their actions did not violate Burton's rights; the district court denied summary judgment to two medical officials at the jail, who filed an interlocutory appeal.

The Fifth Circuit noted that medical care standards for pretrial detainees under the Fourteenth Amendment are virtually identical to those used for convicted prisoners under the Eighth Amendment. It held that the reasonableness of the defendants'

conduct depended on "the severity of the gunshot wound and the comparative abilities of ibuprofen and Percocet to manage pain." However, Burton had failed to introduce any evidence as to those issues.

Therefore, the defendants were entitled to qualified immunity as a matter of law even when the evidence was viewed in the light most favorable to Burton, accepting his claim that he complained to the medical officers that the ibuprofen was ineffective and he remained in pain. The district court's judgment denying qualified immunity was reversed, and Burton's petition for a writ of certiorari was denied in October 2013. See: *Burton v. Owens*, 511 Fed.Appx. 385 (5th Cir. 2013), *cert. denied*. ■

**ColdCrib**  
#1 JAILHOUSE CATALOG  
**ISSUE#3 OUT NOW!**  
3 FREE Non-Nude PHOTOS INCLUDED!  
WITH PURCHASE  
INMATES MUST SEND \$10  
TO GET YOUR OWN MULTI-PAGE  
CATALOG/MAGAZINE TO ORDER  
HUNDREDS OF LOVELY LADIES PHOTOS  
& OTHER SERVICES FOR THE INCARCERATED

ONLY \$10  
THE TRUTH ABOUT SAVING ON JAIL CALLS  
LEARN HOW TO GET FEMALE COMPANION ON THE OUTSIDE  
"CORRECTIONAL FACILITY FRIENDLY"

**GET MAIL FROM FEMALE PENPALS**  
GET LISTED ON OUR PENPAL SITE  
[www.COLDCRIB.com](http://www.COLDCRIB.com)  
Send your photo and info along  
with \$30 for 1 FULL year membership  
OR \$30 for Pen-Pal List of up to 50 addresses  
of our registered female PenPals

**ColdCrib communications**  
INMATES CALL CELL PHONES  
\$17/mo Unlimited Calls  
+ \$15 ONE TIME Activation Fee  
Federal, State, County & Local Facility Inmates  
Local Number Provided Same Day!

**NOW INMATES CAN ORDER THEIR OWN NUMBERS!**  
MAKE EVERY CALL HOME A LOCAL CALL  
NO MORE RUNNING OUT OF MINUTES!  
SEND \$3 FOR PHONE PLAN APPLICATION FORM  
OR HAVE YOUR LOVED ONES ORDER ONLINE  
[www.ColdCribCommunications.com](http://www.ColdCribCommunications.com)

**SPECIAL OFFER**  
BEST 4X6 PHOTOS  
VARIOUS BACKSHOTS & POSITIONS  
**SET OF 15 (NON-NUDE) SEXY PHOTOS**  
ONLY \$16  
MUST ADD \$2 S/H FOR ALL ORDERS  
INMATES MUST SEND FACILITY CHECK OR MONEY ORDERS  
COLD CRIB  
PO BOX 682407  
FRANKLIN TN 37069

**Help From Outside, For Humanity Inside.**  
Offering basic services on the outside.

FINANCE & BUSINESS  
SOCIAL NETWORKING  
PARALEGAL  
ADMINISTRATIVE  
INFORMATION  
PHONE  
CREATIVE

**HFO HELP FROM OUTSIDE**

Help From Outside understands what you're going through. We can help you accomplish the things you need to get done but can't.

We offer:  
- High standards & ethics  
- Timely & professional services  
- Personal touch

"HFO has excellent business etiquette and ethics."  
- T. Brown  
"I like that you sent a personal letter. HFO is more personable than your competitors."  
- A. Mitchell

**WE'VE MOVED! PLEASE CONTACT US AT OUR NEW ADDRESS:**  
For a brochure and application please send a SASE to:  
Help From Outside | 2620 Bellevue Way NE #200 | Bellevue, WA 98004  
206.486.6042 | [www.helpfromoutside.com](http://www.helpfromoutside.com)

# Heat-related Deaths in Texas Prisons Lead to Lawsuits, Reluctant Changes

by Matt Clarke and David M. Reutter

**P**RISONERS ACROSS THE NATION ARE currently experiencing the oppressive heat of summer – particularly in the Southern states. Those incarcerated in Texas, however, have not just been sweating due to high temperatures. They have been dying.

Since 2007 at least 14 prisoner deaths in Texas have been linked to sweltering conditions during brutal summers. Prisoners who suffer from obesity, diabetes and high blood pressure, and those taking psychiatric medications, are especially susceptible to high levels of heat. But despite the fatalities – and resultant lawsuits – until recently the Texas Department of Criminal Justice (TDCJ) has done little to prevent prisoners from literally baking to death.

Such stonewalling has persisted in spite of a federal Court of Appeals ruling that found exposing prisoners to dangerously high temperatures may violate the Eighth Amendment's prohibition on cruel and unusual punishment. Unlike correctional facilities in many other states, most Texas prisons are not air conditioned – only 21 of 111 TDCJ facilities have full climate control, while others have air conditioning only in certain areas such as medical units.

In a rare and unusual display of unity, the union representing Texas prison guards has sided with prisoners, arguing that the excessive heat creates a hazardous work environment for line staff while wardens sit in cool, comfortable offices and even prison armories are air conditioned.

And while Texas lawmakers posture that the tax-paying public opposes providing prisoners with air conditioning, the TDCJ has added insult to injury by allocating three-quarters of a million dollars to construct climate-controlled barns for hogs the prison system raises ... using prisoner labor, of course.

## Lawsuit Seeks Relief

**I**N THE MOST RECENT LEGAL CHALLENGE to the stifling conditions in Texas prisons, four prisoners at the Wallace Pack Unit filed suit in federal court on June 18, 2014, seeking relief from the oppressive heat that turns metal-lined cell blocks into ovens. The plaintiffs, who suffer from medical

conditions or disabilities aggravated by high temperatures, allege they are being subjected to inhumane conditions. See: *Bailey v. Livingston*, U.S.D.C. (S.D. Texas), Case No. 4:14-cv-01698.

"It is a concrete, persistent, well-known danger – summer comes every year, and every year, people die," said Brian McGiverin, an attorney with the Texas Civil Rights Project (TCRP), which represents the prisoners.

"I don't know if I will make it this summer," stated Marvin Yates, 69, one of the four plaintiffs in the case. Yates has chronic obstructive pulmonary disease (COPD) and hypertension. "The heat and humidity are so bad I have trouble breathing," he said. "The metal tables in the dorms are too hot to touch and feel like they can burn your skin."

"The prisoners need the Court to stop TDCJ from subjecting them to these extremely high temperatures because Pack is a geriatric unit that has hundreds of inmates over age 60, and hundreds more that suffer from heat-sensitive medical conditions like asthma, diabetes and COPD," said attorney Jeff Edwards, the lead attorney in the lawsuit. "TDCJ knows the temperatures at Pack place these prisoners in danger but rather than cool the housing areas or move the prisoners to safe locations, TDCJ plays Russian roulette with their health."

The lawsuit asks the court to order the TDCJ to reduce temperatures to a maximum of 88 degrees – the threshold established by a federal court in Louisiana in December 2013 for a unit housing death row prisoners in that state. The suit also seeks class-action status.

"Unlike many problems facing the prison system, this is one that can be easily fixed," Edwards observed. "According to medical experts, TDCJ could eliminate nearly all heat-related illnesses that happen inside its housing areas by simply reducing the heat index to 88 degrees or below."

Edwards said it was no coincidence that one day after the Texas Civil Rights Project issued a press release announcing the lawsuit, the news media reported the TDCJ had taken steps to reduce high

temperatures in prisoner living areas at seven units.

Jay Eason, the TDCJ's deputy director of prison and jail operations, said the purchase of 28 Cool-Space evaporative coolers at a cost of \$1,800 each was "just something we thought we would try." He added, "This year we purchased close to 700 additional fans for offender housing and work areas."

## Study Finds Dangerous Heat Conditions

**T**HE TCRP LAWSUIT WAS FILED TWO months after the release of a study by the University of Texas School of Law's Human Rights Clinic that found high heat and humidity, combined with a lack of policies to protect prisoners from life-threatening conditions, violate the Eighth Amendment and international human rights standards.

The April 2014 study, "Deadly Heat in Texas Prisons," noted that of the 14 prisoners who died from heat-related causes since 2007, 13 suffered from medical conditions or were taking medication that rendered them heat-sensitive. However, the TDCJ had no policy for identifying heat-sensitive prisoners and housing them in climate-controlled prisons. Five of the six facilities where the prisoners died were built within the last 30 years, yet none provide a way to control excessively high temperatures in prisoner housing areas.

The heat index, a standard that measures the impact of severe heat – a combination of actual air temperature and relative humidity, or how hot it feels – is set by the National Weather Service. For example, a heat index of 103 degrees or higher carries a classification of "extreme caution," "danger" or "extreme danger." Extreme caution means that heat exhaustion is possible; the chance is greater on danger days, and heat exhaustion is probable on extreme danger days. Heat exhaustion can result in mental confusion, sweating, headaches, nausea and fatigue. Left untreated it may progress to heat stroke, a condition that can lead to organ failure and death.

According to the Human Rights Clinic

study, TDCJ guards routinely log temperatures and humidity that drive the heat index into extreme caution, danger and extreme danger levels. For example, the 10:30 a.m. reading at the Hutchins Unit on July 19, 2011 indicated an air temperature of 112 degrees, humidity of 65% and a heat index of over 149 degrees – far into the extreme danger range.

“TDCJ takes precautions to help reduce heat-related illnesses such as providing water and ice to staff and offenders in work and housing areas, restricting offender activity during the hottest parts of the day, and training staff to identify those with heat-related illnesses and refer them to medical staff for treatment,” said TDCJ spokesman Jason Clark.

“The response that their policies are adequate today is ridiculous,” countered TCRP attorney Brian McGiverin. “They know well that people are dying from heat in their prisons. If they don’t feel that they have a problem with their policies that simply means that they don’t care that people are dying.”

Water coolers filled with ice can quickly run dry and, in any case, don’t go

far in a housing unit with 150 or more prisoners; further, permitting extra showers is a policy that never seems to be followed. Thus, some prisoners strip down to their underwear and lie on the concrete floor in an effort to stay cool.

The TDCJ does use large fans to circulate air in housing areas, but such measures may actually increase the danger from oppressive heat. According to the Centers for Disease Control, “fans will not protect a person from heatstroke or heat-related illness when temperatures are above 90°F and humidity is above 35%. In fact, using fans in extremely hot and humid conditions may actually increase heat stress on the body.”

### Appellate Court Ruling and More Lawsuits

THE HUMAN RIGHTS CLINIC REPORT added weight to a recent decision by the Fifth Circuit Court of Appeals, which held that exposing prisoners to extreme temperatures “can constitute a violation of the Eighth Amendment.”

On July 30, 2012, the Fifth Circuit issued an unpublished ruling in a lawsuit

brought by former Texas prisoner Eugene Blackmon, who claimed that prison officials “did not take constitutionally adequate measures to address the extremely high temperatures in his dormitory during the summer of 2008, exposing him to substantial health risks. Blackmon contended that he was particularly susceptible to the effects of the heat because, during the relevant time of his confinement, he was 63 to 64 years old and took prescription medication for pre-existing high blood pressure.”

The district court had granted judgment as a matter of law to the TDCJ defendants, and the Court of Appeals reversed and remanded for a new trial. The appellate court concluded that “when viewed in the light most favorable to Blackmon, the evidence presented at trial would allow a reasonable jury to conclude that the extreme heat in Blackmon’s dorm caused substantial health risks to Blackmon – a prisoner who, according to testimony presented at trial, was especially susceptible to the health risks of extreme heat because of his advanced age, pre-existing high blood pressure, and use of prescription medication.” See: *Blackmon v. Garza*, 484 Fed.

msp | LAW



Michael Soukup  
Licensed in Wisconsin and Illinois

Matthew Pinix  
Licensed in Wisconsin

## Appealing a Conviction? Hire an Appellate Attorney.

You wouldn’t hire a **heart surgeon** to perform **brain surgery**. Don’t hire a **trial attorney** to handle **your appeal**. Hire someone who focuses on **criminal appeals**.

Hire the **Law Office of Matthew S. Pinix**, attorneys with more than 10-years’ combined experience handling **criminal appeals** in **Wisconsin** and **Illinois**.

Law Office of Matthew S. Pinix, LLC  
1200 East Capitol Drive, Suite 220  
Milwaukee, Wisconsin 53211  
(414) 963-6164  
www.pinixlawoffice.com

» Rated by Super Lawyers®  
» Rated by avvo.com  
» Better Business Bureau accredited

**\$9.95** per month

**\*UNLIMITED JAIL CALLS\***

**"WE BEAT ALL OUR COMPETITORS"**

**SWITCH TO US TODAY!!**

No Contracts  
No Credit Checks  
No Equipment to buy

**LOWER THE CALL RATES FOR:**

GLOBAL TEL LINK  
SECURUS  
V-CONNECT  
PAYTEL  
ICSOLUTIONS  
VAC  
PLUS MORE

**FEDERAL \* STATE \* COUNTY**

SAME DAY ACTIVATION - NO PER MINUTE CHARGES ON OUR END. JUST \$9.95 A MONTH!

**GET A LOCAL NUMBER TODAY**  
**888-776-2012**

**www.JailCallsUSA.com**

Online Payments Accepted

## Deadly Heat in Texas Prisons (cont.)

Appx. 866 (5th Cir. 2012).

Following remand, the case settled in January 2013 for \$8,000. Blackmon was represented by the Texas Civil Rights Project.

In June 2012, the TCRP filed suit over the wrongful death of prisoner Larry Gene McCollum, 58, at the Hutchins State Jail in Dallas. McCollum suffered from diabetes and hypertension, and weighed 345 pounds. The cause of his death was hyperthermia; when he was taken to a hospital, his body temperature was reportedly 109.4 degrees. The case remains pending. See: *McCollum v. Livingston*, U.S.D.C. (N.D. Texas), Case No. 3:12-cv-02037-L.

The TCRP also filed wrongful death lawsuits in federal court on June 13, 2013 against the TDCJ and University of Texas Medical Branch on behalf of the families of four prisoners who died due to heat-related causes – Douglas Hudson, Kenneth Wayne James, Rodney Adams and Robert Allen Webb. Hudson, James and Adams had died at the Gurney Unit, while Webb died at the Hodge Unit. All had medical conditions that made them more susceptible to high temperatures. The lawsuits remain pending, and the TDCJ defendants filed an interlocutory appeal to the Fifth Circuit in July 2014. See: *Adams v. Livingston*, U.S.D.C. (E.D. Texas), Case No. 6:13-cv-00712-KNM.

“These men were the weakest of the weak,” stated Texas Civil Rights Project attorney Jeff Edwards. “TDCJ knew putting men with these medical conditions in temperatures this high could kill them, but they did it anyway.”

“My dad was supposed to go to jail for four years for drunk driving and the temperatures were so bad that he couldn’t survive four days,” said Ashley Adams, whose father, Rodney, died a day after suffering convulsions. He had a body temperature of 107.9 degrees. Court records include an account from a hospital doctor who said Rodney was “perfectly well” until he was exposed to “extremely hot conditions within the holding tank” at the prison.

“No one deserves to die like that,” Ashley said.

Kenneth Wayne James, 52, was just a few months from release when he was discovered dead in his cell with a body

temperature of 108 degrees on August 13, 2011. An autopsy found his death was due to “environmental hyperthermia-related classic heat stroke.”

Albert Hinojosa died at the Garza West Unit in Beeville, where the windows are sealed shut and the “prison housing areas are like an oven,” his mother, Ramona Hinojosa, wrote in a federal lawsuit filed against the TDCJ and prison and medical officials. An autopsy determined that Albert had died from hyperthermia; the suit remains pending. See: *Hinojosa v. Livingston*, U.S.D.C. (S.D. Texas), Case No. 2:13-cv-00319.

### Politics as Usual and an Unlikely Ally

RAMONA HINOJOSA SAID TEXAS LAWMAKERS are well aware of the problem, noting that state Rep. Sylvester Turner sent a letter to TDCJ executive director Brad Livingston in 2011 “expressing his concern about the high temperatures in TDCJ prisons, that ‘temperatures inside cells have reached as high as 120 degrees during the day and do not fall below 100 degrees at night.’”

But according to Hinojosa’s lawsuit, TDCJ officials consider air conditioning a “waste of money.” The cost of installing air conditioning in prison units has been estimated at \$55 million, and there is no apparent support among legislators to provide that funding.

“We need to have a grownup discussion of what’s practicable and reasonable and what’s politically acceptable. But I can tell you, the people of Texas don’t want air conditioned prisons,” said state Senator John Whitmire, who chairs the Senate Criminal Justice Committee. “These people are sex offenders, rapists, murderers,” he added. “And we’re going to pay for their air conditioning when I can’t go down the street and provide air conditioning to hard-working, taxpaying citizens?”

Whitmire’s political posturing does not take into consideration the options available to Texans who are not incarcerated. Prisoners can’t open a window or go outside to cool off. They can’t go to a convenience store for a cold drink, or take a shower when they want to, or go to a mall or library that has air conditioning. Some don’t even have a fan in their over-heated cells.

The complaints raised by prisoners have garnered support from an unlikely

ally – the union representing Texas prison guards. In a November 21, 2013 editorial in *The New York Times*, Lance Lowry, president of the Huntsville, Texas-based local of the American Federation of State, County and Municipal Employees (AFSCME), condemned the scorching conditions inside TDCJ prisons – especially in light of the agency’s highly-publicized and much-criticized effort to provide climate-controlled housing for the hogs it raises.

“In August, right around the time when the Texas summer heat was at its brutal worst, the state’s prison system finalized a bid to replace its aging swine-production facilities with six new climate-controlled modular barns, at a cost of \$750,000,” Lowry wrote.

“The pigs raised for inmate consumption were going to get relief from the heat, but the state’s inmates would continue to suffer. In the last six years, at least 14 inmates died from heat stroke or hyperthermia in overheated Texas prisons, where air conditioning is scarce and temperatures can reach 130 degrees.”

Why the interest by prison employees? They are adversely affected by the heat, too. In 2012, 92 TDCJ workers suffered heat-related illness or injuries. Another 55 heat-related injuries and illnesses were reported by guards in the first eight months of 2013. Between 2011 and 2013, TDCJ employees filed 162 heat-related workers’ compensation claims.

“The correctional officers, whose working conditions are the same as the inmates’ living conditions, have taken note,” Lowry stated. “Several inmates’ families have filed wrongful death lawsuits, and the officers’ union supports them. We also support those officers who plan to take legal action against the state because of intolerable heat in their workplace.”

Lowry noted that union officials had complained about dangerous temperatures in Texas prisons for over 15 years, to no avail. “I’ve seen some of my co-workers pass out from the heat,” he said.

“Texas needs to ensure humane conditions for the inmates who live in prisons and the officers who work there,” Lowry concluded. “After all, people shouldn’t be treated worse than the livestock.”

“It is outrageous that TDCJ would prioritize the safety of pigs for slaughter over the lives of human beings,” said former TCRP attorney Scott Medlock.



“TDCJ has literally made the decision that protecting its bacon is more important than protecting human lives.”

### Litigation as a Solution

IN A PRELUDE TO WHAT MAY OCCUR IN Texas, as noted above, a lawsuit filed by death row prisoners at the Louisiana State Penitentiary resulted in a December 2013 federal district court order requiring the state to “develop a plan to reduce and maintain the heat index ... at or below 88 degrees Fahrenheit.” The court found that high temperatures at the prison constituted cruel and unusual punishment in violation of the Eighth Amendment.

In May 2014, the district court approved the defendants’ heat remediation plan and appointed Paul J. Herbert as a Special Master to oversee ongoing compliance with the plan. The defendants have appealed the order to the Fifth Circuit. See: *Ball v. LeBlanc*, U.S.D.C. (M.D. La.), Case No. 3:13-cv-00368-BAJ-SCR.

Courts have also ruled on heat-related conditions in prisons and jails in Arizona, Wisconsin, Georgia, Delaware, New York and Illinois. [See, e.g.: *PLN*, Jan. 2006, p.38].

Such legal challenges are not always successful, though. “Florida death row prisoners filed a suit over excessive heat a few years ago and lost,” said *PLN* editor Paul Wright. “But as a practical matter, except for some former Confederate states in the South, like Florida and Texas, [that] deliberately do not air condition their prisons to make a sadistic point, the rest of the country has heated and air conditioned prisons for both the prisoners and staff.”

Ironically, Texas law requires county jails to maintain temperatures between 65 and 85 degrees, but the statute does not apply to state prisons.

“In fact, if one of these counties chose to act like TDCJ and not air condition its jails, it would be breaking the law,” said Ranjana Natarajan, a clinical professor at the University of Texas School of Law. “TDCJ must be held to the same standard.”

“If TDCJ officers locked a dog in a hot car, they would go to prison for animal cruelty,” added Scott Medlock. “Doing this to human beings, no matter what crime they were convicted of, is unconscionable.”

Although heat-related deaths among

Texas prisoners have received recent attention by the news media, they have been a long-standing problem. In November 1998, in an article titled “Texas Prisoners Bake to Death,” *PLN* reported on three prisoners who died due to excessively high temperatures – one on death row and two in transport buses.

Ultimately, the pending lawsuits against the TDCJ over heat-related deaths and injuries may achieve the necessary reforms that Texas prison officials and lawmakers lack the human decency and political will do to themselves. ■

Sources: *Fort Worth Star-Telegram*; *The New York Times*; [www.richmondlegalexaminer.com](http://www.richmondlegalexaminer.com); [www.courthousenews.com](http://www.courthousenews.com); [www.foxnews.com](http://www.foxnews.com); [www.texastribune.org](http://www.texastribune.org); “Deadly Heat in Texas Prisons,” *University of Texas School of Law, Human Rights Clinic* (April 2014); *Houston Chronicle*; *Austin American-Statesman*; *Texas Civil Rights Project*; *CNN*; [www.sltrib.com](http://www.sltrib.com); *Associated Press*; [www.dallasnews.com](http://www.dallasnews.com); [www.thonline.com](http://www.thonline.com); <http://gritsforbreakfast.blogspot.com>; *Wall Street Journal*; *NPR*; <http://journaltimes.com>; [www.woia.com](http://www.woia.com)

## AHRONY, GRAHAM, & ZUCKER, LLP

### A POST-CONVICTION LAW FIRM

**Appeals**

**Habeas Corpus  
Writs (Factual  
Innocence)**

**Parole Hearings**

**SB 260 Hearings**

**MDO Hearings**

**Re-Sentencing**



**Bruce Zucker**

**Orly Ahrony**

**Ian Graham**

**Probation Violations**

**Rap Sheet Correction**

**Prison &  
Parole Issues**

**115 Discipline Issues**

**California & Federal  
Courts**

12400 WILSHIRE BLVD. SUITE 400 • LOS ANGELES, CA 90025

TEL. (310) 979-6400 • [WWW.AHRONYGRAHAM.COM](http://WWW.AHRONYGRAHAM.COM)

California Cases Only • Unsolicited Original Documents Will Not Be Returned

This is an Advertisement for Legal Services

# ICE Officials Target of Sexual Harassment, Gender Discrimination Lawsuits

**A**CCUSATIONS OF SEXUAL HARASSMENT and anti-male bias at the highest levels of the U.S. Immigration and Customs Enforcement (ICE) bureau resulted in a shakeup at the agency and two federal lawsuits, one of which settled for \$175,000.

On September 1, 2012, Suzanne Barr, a longtime aide to Janet Napolitano when she was governor of Arizona, resigned her position as chief of staff to ICE Director John Morton after a coworker alleged in a lawsuit that Barr had created a sexually-charged “frat house” workplace environment – accusations that Barr dismissed as “unfounded and without any merit” and “designed to destroy my reputation.”

“I feel it is incumbent upon me to take every step necessary to prevent further harm to the agency and to prevent this from further distracting from our critical work,” Barr said in her resignation letter. She had been on voluntary leave since James T. Hayes, Jr., the former director of ICE’s detention and deportation operations in Washington, D.C., filed suit in May 2012.

Hayes’ lawsuit claimed that Barr told a male subordinate at an office party that he was “sexy” and asked about the length of his penis. Soon after she took the chief-of-staff position in 2009, Barr supposedly offered to perform oral sex on a male employee during a business trip in Bogota, Colombia, and later phoned a male subordinate from her hotel room and again offered to perform oral sex.

Hayes also accused Napolitano, who served as Secretary of the U.S. Department of Homeland Security during President Obama’s first term in office, of pushing him out of his job to bring in Dora B. Schriro, the former director of Arizona’s state prison system. Schriro later left ICE and currently serves as commissioner of the Connecticut Department of Emergency Services and Public Protection.

Hayes alleged that Schriro was less qualified than him for a job as Napolitano’s special advisor on immigrant-removal procedures, but Schriro was given the position because she “enjoyed a longstanding relationship” with Napolitano.

The lawsuit preceded another complaint filed against Napolitano in July 2012 by ICE staffer Jason Mount, who claimed

he was denied 43 promotions because he’s a white male. Mount, who was promoted to branch chief at ICE headquarters in Washington in October 2009 before filing a gender discrimination complaint a year later, stated he was eventually forced to commit “career suicide” by taking an ICE position in Boston that he said was a “downgrade” in rank and pay.

A federal official told the *New York Post* that those allegations “do not align with the fact that Mr. Hayes routinely held high-ranking assignments, including his current position as special agent in charge of ICE’s second-largest field office.”

As the salacious details in Hayes’ and Mount’s lawsuits were being reported, Napolitano told the *Arizona Republic* in August 2012 that she was considering going back to Arizona, where she had served as the state’s attorney general and governor.

Hayes’ lawsuit settled in November 2012 for \$175,000, and Napolitano subsequently left her post as Secretary of the Department of Homeland Security in 2013. She currently serves as president of the University of California.

The district court in Mount’s employment discrimination lawsuit issued a ruling on April 10, 2014 dismissing several of his claims because “the applicable legal standards regarding administrative exhaustion were not satisfied.” Another claim was allowed to proceed, and the case remains pending. See: *Mount v. Johnson*, U.S.D.C. (D. D.C.), Case No. 1:12-cv-01276-KBJ.



Sources: *Phoenix New Times*, *Chicago Tribune*, *New York Post*, *FOX News*, *www.politico.com*, *www.abcnnews.go.com*, *Associated Press*

## Washington Jail Detainees Sue over Videotaped “Peep Shows”

by Mark Wilson

**“T**HEY WERE DIRECTING THEM TO DO it like dolls. Like taking clothes off a Barbie doll,” stated Seattle, Washington attorney James C. Egan, referring to a pattern of videotaping female detainees in holding cells at the Puyallup City Jail as they undressed and used the toilet.

In 2011, Egan noticed that his DUI clients were routinely forced to strip at the jail, even when they were being released. Surveillance video he obtained through public records requests confirmed his suspicions. The videos, which were readily available to anyone making a records request, revealed a “significant pattern” of women prisoners being forced to strip naked, change clothes or use the bathroom in areas under video surveillance.

Guards orchestrated “peep shows,” Egan alleged. One woman said jail staff ordered her to undress in what she believed was a private cell. After changing into a uniform, a guard forced her to strip again.

“An officer came in and says something

to her and she takes her jail pants off and then her panties,” said Egan. “I thought, ‘this has got to stop.’”

In August 2013, eleven women and one man arrested on misdemeanor DUI charges who were videotaped in holding cells at the jail sued the city, the police chief and a lieutenant. The lawsuit, filed in state court, alleged that jail staff violated the plaintiffs’ civil rights and privacy by filming them as they disrobed and used the toilet. The plaintiffs, represented by Egan, were not identified in the complaint.

“Plaintiffs had a reasonable expectation of privacy which was violated by their having been secretly videotaped in assorted states of undress. It is believed that officers may have committed this offense for the purpose of obtaining arousal or personal gratification,” the lawsuit stated.

Some of the women who were videotaped said they felt “sickened” and taken advantage of, calling the guards “peeping toms” and “perverts.” One of the plaintiffs said jail guards made comments like, “I love

red heads” and “You have a nice body.”

“It was one of the worst experiences of my life because of how mean and rude they treated me,” said another plaintiff. “I am absolutely horrified and violated. I honestly can’t believe it. I had no idea there were cameras around. The fact those are supposed to be police officers upholding our justice system while violating it is absolutely disgusting.”

The defendants, of course, saw things much differently.

“The tactics that Mr. Egan uses are slimy,” stated Puyallup City Attorney Kevin Yamamoto, adding, “Mr. Egan does not have the best interest of these folks at heart” – apparently because he “cherry-picked” defendants who had the most compelling video footage from the holding cells.

Yamamoto did not address whether the practice of filming detainees while they were undressing and using the bathroom also was “slimy.” Instead, he defended the videotaping as necessary to ensure security at the jail.

“While at first blush it may seem a little intrusive to have a safety camera monitoring a holding cell, there are numerous reasons why these cameras are present,” the Puyallup Police Department wrote in a statement on August 22, 2013, when the suit was filed.

“In our view, Mr. Egan’s claims are completely baseless,” added Puyallup Police

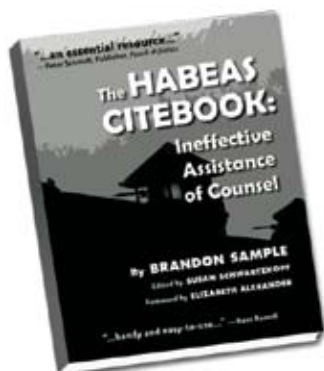
Captain Scott Engle.

In a phone interview with *PLN*, Egan said the city made two mistakes – they placed cameras in areas at the jail where detainees had an expectation of privacy, and the video footage was recorded and stored, making it available to the public through public records requests. He also noted that, ironically, while his clients had been jailed on misdemeanor DUI charges, the offense of voyeurism in Washington state is a felony.

The lawsuit was removed to U.S. District Court, and on July 7, 2014 the court ruled on the defendants’ motion to dismiss and the parties’ cross-motions for partial summary judgment. The court dismissed claims for voyeurism, invasion of privacy under the state’s Public Records Act and violation of a state law related to strip searches (RCW 10.79).

The defendants noted that as of December 13, 2013, the jail no longer recorded video footage from the holding cells, and that all preexisting footage had been destroyed except the videos introduced as evidence in the lawsuit. The district court ordered those videos sealed, and the case remains pending. See: *K.S. v. City of Puyallup*, U.S.D.C. (W.D. Wash.), Case No. 3:13-cv-05926-RJB. ■

Additional sources: [www.mynorthwest.com](http://www.mynorthwest.com), [www.thenewstribune.com](http://www.thenewstribune.com), [www.puyallup.patch.com](http://www.puyallup.patch.com), *CNN*



## FREE BOOK!

Get *The Habeas Citebook* with purchase of a 4-year subscription to *Prison Legal News*. Offer good for new subscriptions and renewals.

Special limited time only! All sales final and no refunds. Order now for this great deal worth \$49.95.

**Prison Legal News** • PO Box 1151 • Lake Worth, FL 33460  
Tel [561] 360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

 **NOLO**



## Nolo's Plain-English Law Dictionary

\$29.99

Order from

### Prison Legal News

P.O. Box 1151

Lake Worth, FL 33460

561-360-2523

Add \$6 shipping for orders under \$50

[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

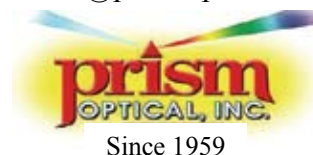


## Save on Prescription Eyeglasses & Shades

Send for a **FREE** Catalog  
Money Back Guarantee

**Prism Optical, Inc.**  
10954 NW 7th Ave  
Dept: LN0814  
Miami, FL 33168

Inquiries from Friends  
and Family Welcome  
1-800-637-4104  
[www.prismoptical.com](http://www.prismoptical.com)  
[contact@prismoptical.com](mailto:contact@prismoptical.com)



# Physician Sentenced for Sexually Abusing Prisoners in Georgia, District of Columbia

ON AUGUST 28, 2012, DR. LEWIS Jackson, 37, was indicted by a federal grand jury for sexually abusing prisoners at the United States Penitentiary (USP) in Atlanta, Georgia. The alleged abuse occurred while Jackson was out on bond pending trial for sexually assaulting a prisoner at the District of Columbia Jail.

Dr. Jackson was employed at USP Atlanta, a medium-security male-only prison with an associated minimum-security satellite camp, from January 2011 through July 2012. The indictment alleged that during the course of medical examinations in October 2011, Jackson tried to perform oral sex on three prisoners. He also allegedly attempted to engage in anal sex with one of the prisoners.

Prior to his employment at USP Atlanta, Jackson performed contract work at the D.C. Jail. When he was arrested in Atlanta, he was out on bond on charges of sexually abusing a prisoner at the D.C. Jail in 2008.

A federal grand jury for the Northern District of Georgia indicted Jackson on three counts of sexually abusing a ward and one count of lying to federal agents related to the offenses at USP Atlanta.

Dr. Jackson pleaded guilty to the federal charges and was sentenced in February 2013 to 25 months in prison and two years of supervised release. See: *United States v. Jackson*, U.S.D.C. (N.D. Ga.), Case No. 1:12-cr-00287-AT-AJB.

Jackson also pleaded guilty to the D.C. charges, and was sentenced in November 2013 to five years in prison and ten years of supervised release for one count of second-degree sexual abuse. He was further required to register as a sex offender and undergo a mental health evaluation and treatment, and lost his medical license.

"He used his position to prey upon the most vulnerable population – inmates – and sexually abuse these men," said Assistant U.S. Attorney Peter V. Taylor, who called Jackson a "sexual predator."

In March 2014, former federal prisoner Howard Brons filed suit alleging that he was sexually abused by Jackson during a clinic visit at USP Atlanta. Another prisoner, Julius Leroy Harrison, had filed a similar suit in December 2012, alleging that Jackson threatened he would tell guards

that Harrison was trying to escape unless he allowed him to perform a sex act. Harrison's pro se lawsuit was later dismissed. ■

Sources: [www.justice.gov/usao/gan](http://www.justice.gov/usao/gan), *Associated Press*, *Washington Post*, [www.ajc.com](http://www.ajc.com), [www.nydailynews.com](http://www.nydailynews.com)

## Failure to Treat Tuberculosis Suit Survives Summary Judgment, Settles for \$1.4 Million

by Derek Gilna

IN JANUARY 2013, THE U.S. DISTRICT Court for the Western District of Washington denied a motion for summary judgment filed by the Bureau of Prisons (BOP), seeking qualified immunity in a *Bivens* lawsuit brought by Jermaine E. Satterwhite, a federal prisoner at FDC Seatac. Satterwhite claimed that prison medical staff had failed to treat his latent tuberculosis infection (LTBI) in violation of the Eighth Amendment.

The district court noted that although a Tuberculin Skin Test, or TST, given to Satterwhite upon his admission to FDC Seatac in 2008 was negative for active tuberculosis, it revealed an 18-millimeter induration that indicated symptoms of latent TB. Tuberculosis has been widely recognized as a serious and potentially fatal disease, particularly in crowded environments such as correctional facilities.

However, prison medical officials "did not discuss LTBI treatment with Satterwhite, did not refer him to a physician to be considered for treatment, and did not record anything ... regarding treatment or follow-up monitoring." Even after he developed a "severe cough," Satterwhite did not receive treatment for LTBI.

He was eventually transferred to a hospital where he was diagnosed with "a lesion in his right lung, enlarged lymph nodes, lytic bone lesions, a compression fracture of one of Satterwhite's vertebra caused by an epidural mass compressing the spinal cord, and a lesion in the first lumbar vertebra – all found to have been caused by untreated, widespread tuberculosis." As a result, he had two spinal surgeries and is now partially paralyzed.

In its program statements and medical treatment guidelines, the BOP outlines a series of tests and procedures for active and latent symptoms of TB, and Satterwhite

established that those procedures were not followed in his case. The district court found the claims alleged in his complaint satisfied both the objective and subjective prongs for an Eighth Amendment violation, and held a court "may infer the existence of [deliberate indifference] from the fact that the risk of harm is obvious," citing *Hope v. Pelzer*, 536 U.S. 730 (2002).

The district court also rejected the BOP's qualified immunity defense, finding "the relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." Here, where BOP procedures and accepted medical practices were not followed, qualified immunity was not available.

The court concluded by stating: "A reasonable physician's assistant, with the authority and responsibility the Court must infer ... would have known that doing nothing in the face of [Satterwhite's LTBI] 'posed such a substantial risk of serious harm that [it] would be constitutionally impermissible.'" See: *Satterwhite v. Dy*, 2013 U.S. Dist. LEXIS 9178 (W.D. Wash., Jan. 23, 2013).

The BOP appealed the district court's summary judgment order but settled the case before the Ninth Circuit issued a ruling. As part of the July 11, 2013 settlement, the BOP defendants agreed to pay \$1.4 million to Satterwhite, with each party to bear their own costs and attorney's fees. Satterwhite was represented by Seattle attorneys Michael E. Withey and Joanne R. Werner. ■

### Dictionary of the Law

Thousands of clear, concise definitions.  
See page 61 for ordering information.





## State of Washington Prison Phone Justice Campaign

***Prison Phone Justice Project needs your help for statewide campaign!***

While much progress has been made in reducing the costs of long distance prison calls, we are still fighting to reduce the high costs of in-state prison and jail calls at the local level. In January 2014, the Human Rights Defense Center (HRDC), the parent organization of Prison Legal News, reopened its Seattle office to launch the Washington Prison Phone Justice Campaign.

This is our first statewide phone justice campaign, and we're excited to have people involved on both the local and national levels who are dedicated to ending the exorbitant phone rates and kickbacks associated with the prison phone industry. We have already been obtaining the phone rates and contracts from all 39 county jails in the state and the Washington DOC.

We hired a local campaign director, Carrie Wilkinson, who manages our office in Seattle and is coordinating the statewide campaign. Washington prisoners and their families pay some of the highest phone rates in the nation, and we need your help to win this battle!

Here's how you can help – first, please visit the campaign website:

**[www.wappj.org](http://www.wappj.org)**

There you can see all the ways you can make a difference. The site allows you to sign up for the campaign and upload videos and share blog entries about how high prison phone rates make it difficult for you to stay in touch with your incarcerated loved ones. You can even call in your story to **1-877-410-4863**, toll-free, at any time! We need to hear how you and your family have been affected by high prison and jail phone rates. If you don't have Internet access, you can mail us a letter describing your experiences. Send letters to HRDC's main office at: **HRDC, Attn: WA Phone Justice Campaign, P.O. Box 1151, Lake Worth, FL 33460**. Washington state prisoners can send a copy of this notice to their family members so they can get involved.

**We especially need copies of telephone bills that show prison and jail phone charges!**

By choosing to participate in the Washington Prison Phone Justice Campaign, you will be playing a key role in ending the unfair phone rates that prisoners' families have to pay. We cannot win this battle without your help, so please visit the campaign website and share your experiences! Donations are also welcome and greatly appreciated, and can be mailed to the above address or made online via the campaign website. Thank you for your support!

# Washington Prison Guard's Murder Costs State \$2.5 Million and Counting

by Mark Wilson

**A** WASHINGTON PRISONER'S CONVICTION and death sentence for murdering a female prison guard has cost taxpayers \$1.6 million, while the guard's family settled a lawsuit against the state for \$900,000.

As previously reported in *PLN*, convicted rapist Byron Scherf, 55, lured state prison guard Jayme Biendl, 34, into the chapel at the Monroe Correctional Complex, and strangled her to death with an amplifier cord on January 29, 2011. Her body was not found until two hours later. [See: *PLN*, Jan. 2012, p.38].

Ironically, prior to her death, Biendl had warned officials at the prison about security deficiencies such as insufficient lighting, poor radio communication and a lack of surveillance cameras. Her complaints were ignored.

Scherf, who had spent most of his adult life in prison and was already serving life without parole, confessed to ambushing and murdering Biendl. He said he had attacked her due to something she said to him, which he refused to divulge. "She didn't deserve to die. She didn't deserve that," Scherf told investigators.

He went to trial and on May 9, 2013 a jury convicted him of aggravated murder; he was subsequently sentenced to death.

The bill has now come due. In July 2013, Snohomish County officials, including the sheriff, prosecutor, medical examiner, superior court clerk and jail officials, billed the state more than \$900,000 for Scherf's prosecution.

Pursuant to state law, defendants facing the death penalty must be assigned two "death qualified" attorneys, and Scherf was represented by defense counsel Karen Halverson and Jon Scott. They billed the state nearly \$400,000 for 4,100 hours of work on the case, according to records obtained by *The Daily Herald*.

Monroe law enforcement officials have also billed the state almost \$300,000 for their investigation of Biendl's murder. Detectives interviewed more than 100 guards, prisoners and other witnesses, collected evidence in the prison chapel and reviewed surveillance footage. Two detectives also assisted prosecutors during the trial.

In total, Scherf's prosecution cost Washington taxpayers \$1.6 million. Still,

that represents only the beginning of many more years of expenses to come.

Scherf now joins eight other prisoners on death row at the Washington State Reformatory in Walla Walla at an average cost of \$122 per day, according to Washington Department of Corrections (DOC) spokesman Chad Lewis.

Under state law, the Washington Supreme Court conducts a mandatory review of all death penalty convictions and sentences, plus Scherf will have several other state and federal appeals. Most of his neighbors on death row have been there for more than a decade, and taxpayers will foot the bill for his incarceration while he exhausts the appeals process.

Further, in January 2014, Biendl's family sued the DOC and former Monroe Correctional Complex superintendent Scott Franks. The suit, filed in Snohomish

County Superior Court, accused the state of failing to protect Biendl due to "highly predictable" security lapses at the facility. The case settled for \$900,000, according to a March 2014 news report.

Following Biendl's death, three guards were fired and other prison employees were disciplined for violating policy, falsifying documents and lying to investigators. The terminated guards were later reinstated following a decision by an arbitrator, who found widespread problems at the prison had contributed to the murder and it was unfair to single out specific staff members.

Franks, meanwhile, was promoted to the DOC's deputy director of prisons. ■

Sources: *The Daily Herald*, *Associated Press*, [www.seattlepi.com](http://www.seattlepi.com), <http://abcnews.go.com>, [www.corspecops.com](http://www.corspecops.com), [www.q13fox.com](http://www.q13fox.com)

## Lethal Injection Protocol, Source of Execution Drugs Challenged in Pennsylvania

**A** LONG-STANDING FEDERAL CLASS-action lawsuit is challenging the constitutionality of Pennsylvania's execution protocol, and one of the issues in the case involves the use of lethal injection drugs obtained from a compounding pharmacy.

The execution drugs used by the Pennsylvania Department of Corrections (PDOP) are made-to-order from a compounding pharmacy. Compounding pharmacies mix medications to order on site; they are largely free of Food and Drug Administration (FDA) quality assurances that apply to standardized drugs. Instead, they are regulated by state law. They also have a history of quality control problems.

For example, a scandal that involved cancer patients receiving chemotherapy drugs containing only a fraction of the proper dosage caused the Missouri State Board of Pharmacy to test drugs from compounding pharmacies from 2006 to 2009. It found 20% of the pharmacies failed the tests, with dosages ranging from zero to 450% of the correct amount. The *Austin American-Statesman* reported that compounding pharmacies did not deliver drugs of proper dosages in one-third of

tests conducted in Texas. Plus a compounding pharmacy in Massachusetts was at the center of a fungal meningitis outbreak in 2012 that killed 48 people.

However, obtaining lethal injection drugs from compounding pharmacies circumvents import restrictions imposed by overseas manufacturers that do not allow their drugs to be used in executions. [See: *PLN*, July 2013, p.22; June 2011, p.1]. Thus, it's little wonder that PDOP officials would seek out such drugs and fight strenuously to keep the source of the state's execution drugs secret.

The PDOP ignored two federal court orders to divulge the source of its drugs; prison officials complied only when the imposition of sanctions was imminent. They then tried to keep the proceedings in the class-action lawsuit closed to the public. U.S. District Court Judge Yvette Kane denied the request because the case presented "issues of greater interest to the public."

On November 5, 2012, the PDOP disclosed that it obtained its lethal injection drugs from compounding pharmacies, and that one of the drugs came from a pharmacy which has had two disciplinary cases filed

against it. But the quality of the drugs used in executions isn't the only issue.

David Waisel, an anesthesiologist at Boston Children's Hospital, testified that the PDOC's color-coding of its lethal injection drugs differs from the standardized color codes in the medical industry. One drug, pentobarbital, has a standard yellow label. Execution team members with medical experience could be inclined to use that drug first.

The problem, however, is that in the PDOC's execution protocol the yellow label is actually used to designate the second drug, pancuronium bromide – a muscle relaxant that renders the person paralyzed. Waisel testified that if that drug was administered first, the prisoner would experience “extraordinary suffering” but could not communicate the pain they felt due to the paralytic effect.

While that problem could be solved with meticulous training on the execution protocols, sworn statements from members of the execution team stated they were not trained in the use of the color-coded lethal injection syringes.

The PDOC defendants in the class-

action suit filed a motion for summary judgment on May 24, 2013; most of the pleadings in the case related to the state's lethal injection protocol have been filed under seal, and the case remains pending. See: *Chester v. Beard*, U.S.D.C. (M.D. Penn.), Case No. 1:08-cv-01261-YK.

Pennsylvania has conducted three executions since 1976, most recently in 1999, while six Pennsylvania prisoners sentenced to death have been exonerated.

Death row prisoners in a number of other states have challenged the drugs used in lethal injections, as well as the secrecy surrounding the types of execution drugs and where they are obtained. [See: *PLN*, March 2014, p.46; Aug. 2012, p.17].

On July 22, 2014, the U.S. Supreme Court rejected a challenge to the execution protocol used in Arizona, overturning an appellate ruling requiring the state to disclose details about how the execution would be carried out. Attorneys for Joseph Rudolph Wood, 55, had contended that he had a right to know the qualifications of the members on the execution team and where the lethal injection drugs had been obtained, and that the state's failure

to provide that information violated his First Amendment rights. See: *Wood v. Ryan*, Ninth Circuit Court of Appeals, Case No. 14-16380; 2014 U.S. App. LEXIS 13867 (9th Cir. Ariz. July 19, 2014).

“Prisoners who are sentenced to death for their crimes have every right to know what drugs are going to be used,” said Stephanie Grisham, a spokesperson for the Arizona Attorney General's office. “But it would be a bad matter of policy if the manufacturer of these drugs were identified.”

Wood was executed by lethal injection on July 23, 2014. The state used the drugs midazolam and hydromorphone, and it took Wood almost two hours to die. Witnesses reported that he snorted and gasped for air for 90 minutes; one reporter said Wood “gulped like a fish on land.” Prison officials contended they had done nothing wrong, and Governor Jan Brewer said Wood had died “in a lawful manner.”

It is unknown whether Arizona officials had obtained the state's execution drugs from a compounding pharmacy. ■

Sources: [www.pennlive.com](http://www.pennlive.com), [www.azcentral.com](http://www.azcentral.com)

### ~ THE SENZA COLLECTION ~

SENZA SPECIALIZES IN PROVIDING YOU SEVERAL CHOICES  
ALL NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY – OR – NON NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY  
WE HAVE DIVIDED OUR CATALOGS INTO THESE CATEGORIES:

#### CAUCASIN/AFRICAN-AMERICAN/HISPANIC/ASIAN/MIXED HOTTIES

EACH PAGE OF OUR CATALOGS HAS 99 GLORIOUSLY SEDUCTIVE LADIES POSING JUST FOR YOUR ENJOYMENT.

OVER 250 CATALOGS TO COLLECT AT JUST \$2.50 PER CATALOG

HERE'S A LITTLE FREEBIE FROM SENZA TO YOU!!!

ORDER YOUR FREE SENZA “99 HOTTIES” SAMPLE CATALOG

JUST SEND US TWO U.S. FOREVER OR FIRST CLASS STAMPS AND A SELF ADDRESSED STAMPED ENVELOPE TO:

**SENZA**  
FREE CATALOG OFFER  
**P.O. BOX 5840**  
**BALTIMORE, MD 21282**

**AND FOR THOSE THAT JUST CANNOT WAIT...TAKE ADVANTAGE OF THIS LIMITED TIME OFFER**

#### SENZA'S INTRODUCTORY SPECIAL \*\*\*DIRTY DOZEN\*\*\*

\$19.99 GETS YOU ALL THIS + FREE SHIPPING AND HANDLING

12 EYE POPPING CATALOGS! EACH CATALOG HAS 99 PICS TO CHOOSE FROM ON EACH PAGE

PLUS

12 4X6 PRINTS FROM OUR MIXED HOTTIES SELECTION TO SHOW OFF SENZA'S 4X6'S PRINT QUALITY.

**ALL FOR JUST \$19.99**

**REMEMBER YOU MUST: SPECIFY NUDE OR NON-NUDE ON YOUR ORDER**

**SPECIFY YOUR INSTITUTIONS RESTRICTIONS AS TO THE NUMBER OF PRINTS ALLOWED IN ONE ENVELOPE.**

**SENZA CORPORATE POLICIES – PLEASE REVIEW THEM CAREFULLY**

**ALL SENZA COLLECTION IMAGES ARE SOLD AT A FLAT PRICE OF 0.35 CENTS EACH.**

ANYONE WISHING TO PURCHASE 1000 + PRINTS AT ONE TIME WILL BE GIVEN A FLAT PRICE OF 0.30 CENTS PER IMAGE.

**SENZA HAS A MINIMUM ORDER REQUIREMENT OF: \$15.00 THIS DOESN'T INCLUDE S&H CHARGES.**

**SHIPPING AND HANDLING CHARGES ARE AS FOLLOWS:**

**1 – 5 4x6 PRINTS – \$1.00 PER ENVELOPE / 6 – 15 4x6 PRINTS – \$1.50 PER ENVELOPE / 16 – 25 4x6 PRINTS – \$2.00 PER ENVELOPE**

YOU MUST NOTIFY SENZA ON THE ORDER FORM, THE MAXIMUM NUMBER OF PRINTS YOUR INSTITUTION WILL PERMIT IN EACH ENVELOPE

**SENZA WILL ACCEPT U.S. FIRST CLASS POSTAGE STAMPS AT THE RATE OF \$5.00 FOR EACH BRAND NEW FLAT BOOK OF 20 STAMPS.**

YOU ARE REQUIRED TO KNOW YOUR INSTITUTIONS POLICIES REGARDING WHAT IMAGES ARE ACCEPTABLE INTO YOUR FACILITY INSTITUTION. THERE ARE NO EXCEPTIONS TO THIS POLICY. RETURNED/REJECTED MAIL – YOU WILL HAVE 15 BUSINESS DAYS TO SEND US A SASE WITH A STREET ADDRESS IN WHICH TO MAIL YOUR RETURNED/REJECTED PRINTS.

AFTER 15 DAYS THE PRINTS ARE RETURNED TO OUR INVENTORY.

ALL SALES ARE FINAL/NO REFUNDS OR EXCHANGES

# Cover-up of Angola Prisoner's Beating Results in Guilty Pleas, \$8,000 Settlement

THREE LOUISIANA PRISON OFFICIALS have pleaded guilty to federal charges related to their role in the beating of a prisoner at the Louisiana State Penitentiary in Angola.

The incident occurred on January 24, 2010, when prisoner Roy H. McLaughlin, Jr. escaped from his assigned location and was apprehended shortly afterwards, still on the prison's property. When Major Kevin L. Groom, Sr., 45, arrived at the scene, McLaughlin was handcuffed behind his back and in the custody of two other guards in the back of a truck.

One of three high-ranking officials present grabbed McLaughlin's head and slammed it against the truck; in a subsequent lawsuit, McLaughlin claimed the official who slammed his head was Warden Burl Cain. The two guards in the back of the truck also assaulted McLaughlin. Groom was ordered into the truck to escort McLaughlin to the medical unit; during the trip, the two other guards struck and kicked McLaughlin while he lay on his stomach handcuffed.

According to McLaughlin, he suffered contusions and a broken toe; he had tried to escape from Angola twice before the January 2010 incident.

Of the three guards in the truck, Groom had the highest rank. As part of his plea agreement, he admitted that he did nothing to stop the assault. He also conceded that during an investigation into the incident he wrote and submitted a false report and provided false information to the FBI.

Groom entered his guilty plea in December 2012 to charges of falsification of records in a federal investigation and making a false statement to the FBI.

"Law enforcement officers often act as our heroes in protecting us every day; so, when some violate their duties to the public, it is a sad day," said U.S. Attorney Donald J. Cazayoux, Jr. "They must and will be held accountable, and this plea is a step forward in securing justice in this case."

In May 2013, another former Angola officer, Lt. Col. Jason Giroir, 35, pleaded guilty to federal charges of falsifying documents and lying to the FBI. He was accused of participating in the attempted cover-up

but had not assaulted McLaughlin.

Most recently, on June 24, 2014, Captain Mark Sharp, 33, pleaded guilty to civil rights violations in connection with the incident. Sharp admitted that he repeatedly hit McLaughlin with a baton during the drive to the medical unit.

Neither Groom, Giroir or Sharp have

been sentenced as this issue of *PLN* goes to press. McLaughlin settled his lawsuit for \$8,000. See: *McLaughlin v. Cain*, U.S.D.C. (M.D. La.), Case No. 3:10-cv-00583-JTT-JDK. ■

Sources: *LexisNexis*, <http://uscso.com>, [www.theadvocate.com](http://www.theadvocate.com), [www.justice.gov](http://www.justice.gov)

## Fifth Circuit Upholds Qualified Immunity in Medical Neglect Death of Texas Detainee

by Matt Clarke

IN A CASE INVOLVING THE DEATH OF A pretrial detainee due to lack of medical treatment, the Fifth Circuit Court of Appeals upheld a district court's order granting qualified immunity to a contract doctor at a county jail and to the county itself.

When Jason Ray Brown, 26, was booked into jail in Wichita County, Texas in July 2004, he told the booking officer that he suffered from autoimmune chronic hepatitis, enlarged veins in the lower esophagus, anemia, jaundice and an enlarged spleen, and that he was under the care of a medical specialist. An hour later he complained of vomiting a small amount of blood.

Licensed vocational nurse (LVN) Michelle George obtained a list of Brown's medications from his pharmacist, but was told by her supervisor, LVN Rose Ingram, not to order any medication until Brown was seen by the jail's contract physician, Daniel Bolin.

Just before midnight the next day, Brown vomited a large amount of blood. He told a jailer that he had gastric ulcers and had received 27 units of blood due to internal bleeding within the previous six months. The jailer called LVN Kay Krajca, who told him to give Brown a dose of liquid antacid per Dr. Bolin's standing orders.

Soon afterwards, other prisoners told the jailer that Brown was complaining he was in a great deal of pain. Called at home, Krajca said Brown should receive a phenegan suppository for his nausea, per the standing orders. Jailers who arrived to administer the suppository around 2:25 a.m. discovered Brown "moaning and incoherent." This time when they called Krajca she

agreed to return to the jail.

After Krajca arrived, she had Brown transferred to a medical cell where he was allegedly monitored from time to time through a slot in the door. He was later discovered without a pulse; responding emergency medical technicians said he had been dead quite some time. An autopsy reported his death was due to a massive gastrointestinal hemorrhage.

Brown's parents filed suit against the county, sheriff, jailers, medical staff and Dr. Bolin under 42 U.S.C. § 1983, with pendant state negligence claims. They alleged the defendants were deliberately indifferent to Brown's serious medical needs in violation of his due process rights. The district court granted qualified immunity to the sheriff, which was affirmed on appeal. See: *Brown v. Callahan*, 623 F.3d 249 (5th Cir. 2010).

Dr. Bolin and Wichita County then moved for reconsideration of their summary judgment motions based on qualified immunity, citing the Court of Appeals' decision in favor of the sheriff. The district court granted their motions for qualified immunity, and the plaintiffs appealed.

The Fifth Circuit noted that Krajca "undoubtedly acted with deliberate indifference to Brown's medical needs," and that "[a]s a pretrial detainee, Brown had a clearly established Fourteenth Amendment right not to be denied medical care as a result of deliberate indifference."

Brown's parents alleged that Dr. Bolin was "allowing the LVNs to medicate detainees from the standing orders requiring them to perform medical care beyond their professional training," and intimidated



nurses who either called him for medical assistance at night or had prisoners transported to a hospital for emergency care, making him responsible under the theory of supervisory liability.

The appellate court held that Bolin had not directly observed Brown's condition and had no indication that his standing orders or intimidation of the nurses put prisoners' health at risk prior to Brown's death. Thus, he was entitled to qualified immunity. The county was also entitled to qualified immunity as there was no proof it had established an unconstitutional policy at the jail that was a "moving force" in the violation of Brown's rights.

"Although we reach these conclusions based on the facts available to Dr. Bolin and the County at the time of Brown's incarceration, this holding is not approval of the medical care provided by Dr. Bolin or the Wichita County Jail," the Fifth Circuit wrote. "As pointed out by the plaintiffs, there have been two documented cases of improper assessment by the nursing staff at the jail since Brown's death which could be viewed as evidence that the nurses do not have the proper training to recognize criti-

cal medical situations.... However, based on the record in this case, we affirm the judgment of the district court granting qualified immunity to these defendants."

One appellate judge dissented and would have denied qualified immunity to Bolin. The plaintiffs filed a petition for writ of certiorari with the Supreme Court, which was denied on June 17, 2013. See: *Brown v. Bolin*, 500 Fed.Appx. 309 (5th Cir. 2012), *cert. denied*.

Apparently, medical care at the jail hasn't improved much. On May 21, 2014, former Wichita County Jail prisoner Nicole Guerrero filed suit in federal court after she delivered a baby in a solitary confinement cell in 2012, without medical assistance, resulting in her baby's death. The lawsuit names the county, sheriff, registered nurse Ladonna Anderson and Correctional Healthcare Management as defendants.

Guerrero said she was denied medical care when she

began to experience labor, even though she was "in obvious distress, [and] began to moan, scream and cry." Anderson's nursing license is listed as "delinquent" by the Texas Board of Nursing. The lawsuit remains pending. See: *Guerrero v. Wichita County*, U.S.D.C. (N.D. Tex.), Case No. 7:14-cv-00058-O. ■

Additional source: *Times Record News*

### **Hepatitis & Liver Disease: A Guide to Treating & Living with Hepatitis & Liver Disease**

Revised ed. By Dr. Melissa Palmer  
See page 61 for more information.

**ORDER THE NEW PRISON OFFICIAL CATALOG - ONLY \$10**



**ISSUE #1 OR ISSUE #2**  
5 FREE HOT MODEL PHOTOS INCLUDED WITH PURCHASE

**PRISON OFFICIAL**  
WWW.PRISONOFFICIAL.COM

**INMATES #1 RECOMMENDED**

**CORRECTIONAL FACILITY APPROVED**

**GET MAIL**  **DONT DELAY**

**ORDER THE NEW PEN PAL LIST  
OF 50 REAL ADDRESSES TO  
FEMALES WAITING TO CORRESPOND  
TO PRISONERS**

**RECENT PHOTOS INCLUDED!**  
**SEND \$49.95**



Inmates post your profile on our Pen Pal website  
**www.PrisonOfficial.com**  
2 year membership - Send \$30  
250 word limit send S.A.S.E for return of your photo

**Send Facility Checks/Money Orders To:**  
**PRISON OFFICIAL**  
**P.O. BOX 1427**  
**WARRENVILLE IL 60555**

MUST ADD \$2 S/H  
TO ALL ORDERS

## **HotFlixx**

Photo Service

- \$1/ Each -10 Picture Minimum
- High Quality/ Clear 4x6 Pictures
- Free Shipping /Fast Delivery
- Great Customer Service- We **LOVE** our customers!
- **FREE Catalog**- just send a SASE and tell us if you want a male or female catalog
- Custom Orders/ Special requests \$2/ each (example celebrity upskirts)
- Enlargements 5x7, 8x10 available

### The following catalogs are \$3 each

Women Vols 1, 2, 3, 4, 5, 6, 7  
Action shots, Black Women,  
Asian, Latina, Plumpers Vols 1,2,  
Topless Vols 1,2, Boobs Vols 1,2,  
Camel Toe Vols 1,2, Tattoo Girls,  
Foot Fetish, Transsexual,  
Male Vols 1,2,3,4,5

\*We accept money orders/ inmate trust\*

**HotFlixx**  
**PO Box 137481**  
**Fort Worth, TX 76136**

# Ninth Circuit Again Rejects California's Resistance to ADA Obligations

by Mark Wilson

ON OCTOBER 4, 2013, THE NINTH Circuit Court of Appeals affirmed a district court order requiring California prison officials to disseminate and implement a previously-negotiated County Jail Plan for disabled prisoners and parolees.

As previously reported in *PLN*, in *Armstrong v. Schwarzenegger*, 622 F.3d 1058 (9th Cir. 2010), the Ninth Circuit held that prison officials may not “shirk their obligations” under the Americans with Disabilities Act (ADA) and Rehabilitation Act by housing state prisoners in county facilities and then claiming no responsibility for their treatment.

“Defendants have the responsibility of ensuring that their prisoners are afforded their rights under the ADA, regardless of where the State incarcerates them,” the appellate court concluded. [See: *PLN*, Aug. 2012, p.34; Nov. 2011, p.28].

On October 1, 2011, the California legislature adopted California Penal Code § 3056 as part of a “realignment” plan designed to ameliorate prison overcrowding. [See: *PLN*, June 2014, p.1]. The defendants in *Armstrong* then argued before the district court that § 3056 absolved them of their responsibility for state prisoners confined in county jails. The court rejected that argument in two separate orders.

The district court then ordered renewed “negotiations and the eventual dissemination to the counties of a compliance plan providing for, among other things, the tracking and monitoring of *Armstrong* class members housed in county jails.”

The parties eventually negotiated a revised County Jail Plan, but the defendants “refused to disseminate or implement the Plan” after Governor Jerry Brown signed amendments to § 3056 into law on June 27, 2012. The amendments specified that while housed in county jails, state prisoners “shall be under the sole legal custody and jurisdiction of local county facilities.”

The following month the district court again ordered the defendants to disseminate and implement the County Jail Plan. Instead they appealed the court’s order, renewing their argument that § 3056 “absolves them of any responsibility for *Armstrong* class members during the time in which they are housed in county jails.”

The Ninth Circuit affirmed. “Since 1994, disabled state prisoners and parolees have been engaged in a seemingly never-ending struggle with California state officials over whether defendants must provide disability accommodations under the Americans with Disabilities Act (‘ADA’) and the Rehabilitation Act,” the Court of Appeals wrote. “Notwithstanding a series of careful district court orders dating back to 1996 and an opinion by this Court affirming the issuance of a permanent injunction, defendants have resisted complying with their federal obligations at every turn. These appeals provide no exception.”

The appellate court held that “the state cannot house persons for whom it is responsible in jails where the state reasonably expects indignities and violations of federal law will continue to occur, turn care over to county custodians, and then disown all responsibility for their welfare.” As such, the Court of Appeals found the § 3056 amendments “do not relieve defendants of all responsibility for the discrimination suffered by *Armstrong* class members housed in county jails, past

and present, or of their obligation to assist in preventing further violations.”

The Court noted that the ADA and Rehabilitation Act violations in county jails were “systemwide and extensive,” and involved “the widespread denial of mobility-assistance devices to persons unable to physically function without them, the denial of hearing devices to deaf class members, and the denial of accessibility devices, such as tapping canes, to blind class members. These denials forced disabled class members into the vulnerable position of being dependent on other inmates to enable them to obtain basic services, such as meals, mail, showers, and toilets.”

The Ninth Circuit concluded that the “Defendants remain responsible for taking certain measures to ameliorate or avoid the admitted and ongoing violations of plaintiffs’ rights under the ADA and Rehabilitation Act.” California officials petitioned the Supreme Court for a writ of certiorari, which was denied on June 9, 2014. See: *Armstrong v. Brown*, 732 F.3d 955 (9th Cir. 2013), *cert. denied*. ■

## Jails Stop Posting Mug Shots to End “Extortion” by Profiteering Websites

A GROWING NUMBER OF JAILS ARE NO longer putting booking photos of arrestees online in order to prevent websites such as mugshots.com from obtaining and posting them, then charging people to remove them.

At least seven states have passed bills related to the commercial use of mug shots, including Georgia, Texas, Oregon, Illinois, Colorado, Wyoming and Utah; similar legislation has been introduced in over a dozen other states, including California, Florida, New Jersey and Missouri.

In Georgia, mug shots were removed from law enforcement websites as of July 1, 2014. People can still obtain mug shots through public records requests, but must provide a statement that they will not post the photos online and charge a removal fee.

Using mug shots as a business model has been a growing and apparently profitable trend. [See: *PLN*, Oct. 2012, p.36]. Around 11.6 million people cycle in and out

of jails in the U.S. each year, which creates a lucrative market for dozens of mug shot websites.

When South Carolina defense attorney Seth Rose found his client’s booking photos on a site that charged almost \$400 to remove them, he decided to take action. “It’s extortion,” he said.

Rose, who serves as a councilman in Richland County, learned that mug shot sites posted every booking photo originally published on the website of the Alvin S. Glenn Detention Center, which removes the photos once a defendant posts bond or leaves the facility.

When several of his clients struggled to have their booking photos removed from mugshots.com, Rose spoke with the county attorney and jail officials. Richland County has a database of over 9,000 photos, making it the state’s second-largest provider of mug shots for the website.

That creates a huge source of potential

revenue. Mugshots.com has an “unpublish” link on its site, which directs users to an affiliated website, unpublisharrest.com. That site lets people submit a form requesting removal of their mug shot – but only after they pay a fee that starts at \$399. The fee applies even if a person is found not guilty, the charges are dismissed or their record is expunged.

After Rose spoke with Richland County officials, the jail decided to discontinue posting mug shots online. It still lists names and charges for arrestees, and provides mug shots to the media upon request.

Rose said the booking photos can permanently damage a person’s reputation, especially college students he has represented. “It can have lifelong ramifications,” he noted, such as hindering the ability to obtain employment.

Mug shot websites use search engine optimization (SEO) to ensure that people’s booking photos appear at the top of the results for popular search engines like Google and Bing when someone searches for their name.

“They are essentially saying, ‘We’ve got your mug shot online. We know it’s going to interfere with your life and we’re going to charge you to take it down, and if you don’t pay us we’re going to continue to embarrass your personal and business reputation,’” said Ohio attorney Scott Ciolek.

In Florida, the Pinellas County Sheriff’s Office stopped publishing mug shots on its website in January 2014. Sheriff Bob Gualtieri said sites that post booking photos aren’t doing anything illegal, but charging a fee to remove someone’s mug shot is “unconscionable, verging on blackmail and clearly taking advantage of someone’s circumstances.”

Attorneys for mug shot websites have defended their clients’ practices.

“Unpopular speech, unpopular actions are generally protected under the First

Amendment, provided they’re not illegal in other ways,” said Marc Epstein, who represents mugshots.com. “It’s uncomfortable, perhaps. But it doesn’t rise anywhere near the level of extortion. We threaten nobody.”

Brian S. Kabateck, a Los Angeles attorney suing one of the websites, disagreed. “They’re putting it out there not for some great public purpose,” he noted. “They’re putting it out there for economic gain. And that’s the only reason they’re doing this.”

In Ohio, a federal lawsuit against two mug shot websites, bustedmugshots.com and mugshotsonline.com, settled in December 2013. The sites agreed to pay \$7,500 and not charge people for removing their photos. Both sites are run by Citizens Information Associates LLC, based in Austin, Texas. See: *Lashaway v. D’Antonio*, U.S.D.C. (N.D. Ohio), Case No. 3:13-cv-01733-JZ.

Another suit filed in Florida is challenging the practice of posting public mug shots on private websites and then charging fees to remove them. The suit names the operators of nine mug shots sites, including mugshots.com and whosarrested.com. The plaintiffs moved to certify the case as a class-action, which was denied by the federal district court in May 2014. A renewed motion for class certification remains pending. See: *Bilotta v. Citizens Information Associates LLC*, U.S.D.C. (M.D. Fla.), Case No. 8:13-cv-02811-CEH-TGW.

Meanwhile, mugshots.com, which describes itself as a “Google for Mugshots,” continues to partner with unpublisharrest.com to remove booking photos from its site – for fees ranging from \$399 for one arrest to \$1,799 for five arrests. ■

Sources: *The State*, [www.stltoday.com](http://www.stltoday.com), [www.wjbf.com](http://www.wjbf.com), [www.tampabay.com](http://www.tampabay.com), [www.wired.com](http://www.wired.com), [www.theguardian.com](http://www.theguardian.com), [www.foxnews.com](http://www.foxnews.com), *Los Angeles Times*, [www.wcpo.com](http://www.wcpo.com)

# LEARN TO PROTECT YOUR RIGHTS

## YOU HAVE A RIGHT TO

- Adequate medical care
- Protection from assault
- Humane living conditions
- Safety from officer abuse

Learn how to defend your basic human rights with the comprehensive litigation guide, **Protecting Your Health and Safety**, 2nd edition, written specifically for prisoners who are unable to receive help from a lawyer.

Written by Robert E. Toone  
Edited by Dan Manville  
*A Project of the Southern Poverty Law Center\**

**COST** \$16 total  
(\$10 + \$6 shipping/handling)  
FREE shipping/handling for orders from Prison Legal News over \$50

## ORDER A COPY

Send a check  
or money order to:  
**Prison Legal News**  
**PO Box 1151**  
**Lake Worth, FL 33460**  
**561-360-2523**

Be sure to include your name, identification number (if any), and mailing address. We also accept VISA and Mastercard. If using a credit card, please include the type of card (VISA or Mastercard), card number, and expiration date.

This book does not deal with legal defense against criminal charges or challenges to convictions that are on appeal. Edition last revised in 2009.

*\*Please do not send orders to the Southern Poverty Law Center.*

## WHEN IT IS YOUR FAMILY’S FUTURE, EXPERIENCE MATTERS

### STATE AND FEDERAL POST-CONVICTION AND APPEALS

Licensed since 1995, hundreds of appellate briefs and habeas petitions, capital qualified for habeas and appeals in Texas and U.S. Southern District of Texas, Motions for New Trial, Rule 35 and 60b motions, re-sentencing and arrest of judgment.

Call or write the Law Offices of Patrick F. McCann, 713-223-3805.

909 Texas Ave, Ste 205, Houston, Texas 77002 • [writlawyer@justice.com](mailto:writlawyer@justice.com)

**Serious financial inquiries only.**

# Oregon Attorney Fee Repayment Requires Showing of Ability to Pay

by Mark Wilson

ON OCTOBER 9, 2013, THE OREGON Court of Appeals held that a trial court lacked the authority to require a criminal defendant to pay \$37,400 in court-appointed attorney fees.

Oregon criminal defendants may be ordered to pay their court-appointed attorney's expenses. However, a court "lacks authority" to impose such fees unless it determines that the defendant "is or may be able to pay them." That determination must be supported by the record and is not satisfied "by a speculative possibility that a defendant may receive a gift, inheritance, or other windfall."

Larry Lynn Wallace pleaded no contest to murder with a firearm in exchange for a sentence of life imprisonment with a 25-year minimum. Additionally, the prosecutor asked the court to sentence Wallace to pay \$37,400 in court-appointed attorney fees plus \$26,018.09 in restitution, a \$607 unitary assessment and a \$35 offense surcharge. The prosecutor made no showing that Wallace had the ability to pay any of the requested financial assessments, other than speculative conjectures. Noting that Wallace had been receiving Social Security disability payments prior to his incarceration, his attorney argued that he did not, and would not, have the ability to pay.

"If defendant were released after 25 years, he would be 76 years old. His employment opportunities would be limited by his physical disability and his age. According to defense counsel, they would also be limited by defendant's lack of education and mental-health problems. Therefore, defense counsel argued, '[defendant] does not have the ability right now, and he will not have the ability in the conceivable future, realistically, for the rest of his life[,] to pay anything more than restitution.'"

Nevertheless, the trial court ordered Wallace to pay the financial assessments. With respect to the court-appointed attorney fees, the court found "that at least at this point you don't have an ability to pay that. Although it is uncertain whether you would have the ability to pay that in the future. And I say that because I don't know

what money you may come into as a result of your family relationships that could be put toward making payments." As such, the court ordered Wallace to pay the attorney fees but suspended the payment.

The Oregon Court of Appeals reversed, holding that "the trial court did not find (and, given the record before it, could not have found) that defendant was or might be able to pay the \$37,400 in attorney fees – in addition to the \$26,018.09 in restitution, the \$607 unitary assessment, and the \$35

offense surcharge – given the length of his incarceration, his disability, and the other limitations on his ability to earn any income in prison or upon release."

The appellate court found that the suspension of payment of the fees by the trial court was irrelevant, because "under ORS 161.655(4), the trial court did not have the authority to impose the fees in the first instance." See: *Oregon v. Wallace*, 258 Ore. App 800, 311 P.3d 975 (Or. Ct. App. 2013).

## Private Prison Contractor Not Subject to New Jersey's Open Records Act

ON OCTOBER 12, 2012, A NEW JERSEY state superior court held that Community Education Centers (CEC), a private prison contractor, was not required to disclose its records under the state's Open Public Records Act (OPRA), N.J.S.A. § 47:1A-1 to -13. The decision was affirmed on appeal.

CEC operates Delaney Hall, a prison-like facility, for Essex County. The company contracts with Education and Health Centers of America (EHCA), a private non-profit entity, and EHCA contracts separately with the county to manage the facility.

John Paff filed an application in state court to require CEC to comply with his OPRA request for disclosure of records, including attorney billing records and personnel files for three CEC employees. The company opposed his request, arguing it was not subject to OPRA because it was not a "public entity."

The court held that records subject to OPRA are limited to those kept or filed by any officer, commission, agency or authority of the state or political subdivision thereof in the course of the government's official business. "OPRA defines 'public agency' to include 'any of the principal departments in the Executive Branch of the State Government ... and any independent State authority, commission, instrumentality or agency.'" Thus, under the plain language of the statute, CEC's

records were not subject to OPRA.

Paff contended, however, that OPRA "applies to taxpayer-funded, governmental activities regardless of whether they are carried out by a public or private entity." He argued New Jersey should apply a governmental function test for its application of OPRA – a test that has been adopted for public records laws in other states. [See, e.g.: *PLN*, June 2013, p.14; Oct. 2008, p.24].

The superior court held that although the New Jersey Supreme Court had implicitly used governmental function language in *Sussex Commons Associates, LLC v. Rutgers*, 210 N.J. 531 (N.J. 2012), absent a direct finding that the state had adopted a governmental function test, it must continue to abide by the creation test under which only entities created by a political subdivision of the government are subject to OPRA.

Consequently, Paff's application was denied. See: *Paff v. Community Education Centers*, Essex County Superior Court (NJ), Docket No. ESX-L-1658-12.

Paff appealed and the Appellate Division affirmed in an unpublished ruling in November 2013. The court found that "CEC was not created, nor is it controlled, by any governmental entity," and thus was "not a 'public agency' under OPRA." See: *Paff v. Community Education Centers*, 2013 N.J. Super. Unpub. LEXIS 2813 (App.Div. Nov. 21, 2013), cert. denied.



# Washington Supreme Court Recognizes Racial Bias in Jury Selection but Fails to Take Action

by Mark Wilson

**"P**EREMPTORY CHALLENGES ARE USED in trial courts throughout this state, often based largely or entirely on racial stereotypes or generalizations," declared Washington State Supreme Court Justice Steven Gonzalez. "As a result, many qualified persons in this state are being excluded from jury service because of race."

Peremptory challenges date back to 13<sup>th</sup> century England, Gonzalez noted. Since the king was allowed to remove potential jurors for cause, peremptory challenges were created to make trials more fair.

Washington's territorial legislature adopted peremptory challenges, without debate, more than 150 years ago. The practice is permitted in all states.

Today, prospective Washington jurors may be removed for cause based on evidence of potential impartiality. The defense and prosecution are also allowed three peremptory challenges each to remove jurors for no reason at all, so long as it's not for purposeful discrimination.

In *Batson v. Kentucky*, 476 U.S. 79 (1986), the U.S. Supreme Court attempted – but failed – to eliminate institutional discrimination during the jury selection process.

"Twenty-six years after *Batson*, a growing body of evidence shows that racial discrimination remains rampant in jury selection," wrote Washington State Supreme Court Justice Charlie K. Wiggins. "In part, this is because *Batson* recognizes only 'purposeful discrimination,' whereas racism is often unintentional, institutional or unconscious."

Kirk Saintcalle, an African American defendant, challenged his first-degree felony murder conviction for a 2007 homicide, alleging racial bias in jury selection at his trial. The only black person in the jury pool was singled out by prosecutors for additional questioning about her views on race in the justice system. During that questioning, she revealed that a friend had been murdered two weeks earlier.

Prosecutors used a peremptory challenge to dismiss the juror, claiming they did so because she said she did not know how her friend's murder would affect her during the trial.

Given that prosecutors would not have learned of the murder if not for the questions regarding her views on race, Saintcalle

claimed the prosecution's rationale was pretextual. The prosecutors had also tried, unsuccessfully, to dismiss the only Mexican-American on the jury panel.

While unanimously recognizing that racial bias in jury selection is a problem, the Washington Supreme Court was sharply divided about what to do about it, as evidenced by an August 1, 2013 ruling with five opinions totaling 110 pages in Saintcalle's appeal.

Eight of the nine Justices voted to uphold Saintcalle's conviction because they could not conclude that the juror's exclusion was clearly improper. Yet they unanimously agreed that race is often a factor – consciously or unconsciously – when attorneys use peremptory challenges.

Justice Wiggins cited studies that found prosecutors typically use peremptory challenges to remove black jurors while defense lawyers most frequently exclude white jurors.

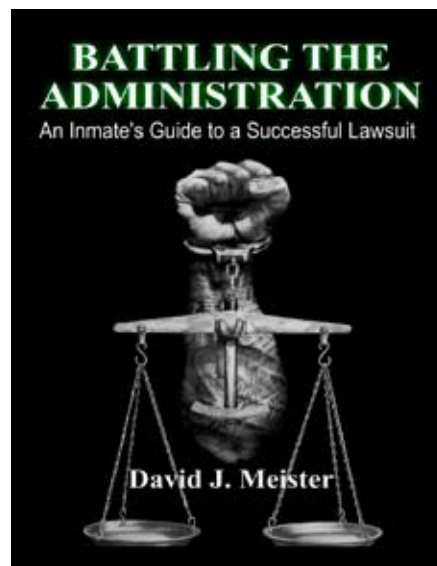
Suggesting that peremptory challenges increase administrative and appellate costs but do not do any good, Justice Gonzalez followed the lead of U.S. Supreme Court Justices Thurgood Marshall and Stephen Breyer in proposing the elimination of the practice. However, none of his colleagues wanted to make such drastic, sweeping changes.

The authors of the lead opinion in Saintcalle's appeal also acknowledged the problem, but believed the Court could craft new rules to prevent racial bias in jury selection. Allowing a judge to overrule a peremptory challenge if there is a reasonable probability that it was motivated by race might address the issue, Justice Wiggins suggested. He conceded, however, that prohibiting peremptory challenges may be the only way to eliminate racial bias.

While also concerned about racial bias, Justices Barbara Madsen and Jim Johnson felt the issue was not properly before the Court. Justice Debra Stephens wrote separately, suggesting that the legislature, not the Court, must fix the problem since peremptory challenges are enshrined in state law.

Thus, while acknowledging that "Racial inequalities permeate our criminal justice system and present important moral issues we all must grapple with," the Washington Supreme Court ultimately did nothing to address or correct that problem, and upheld Saintcalle's conviction. See: *Washington v. Saintcalle*, 178 Wn.2d 34, 309 P.3d 326 (Wash. 2013), cert. denied. ■

Additional source: *Seattle Times*



Written from a prisoner's perspective, this book is excellent for both the first-time litigant and the old hand, a practical guide for navigating the strange world of prisoner's rights.

- ⇒ Guidance on how to get organized
- ⇒ Tips for investigating and building a case
- ⇒ Spelling and Grammar refresher
- ⇒ Detailed overview of the legal system
- ⇒ Sample complaint and other forms
- ⇒ Covers court rules, evidence, and exhibits
- ⇒ Details on hearing and trial practice
- ⇒ Comprehensive summary of prisoner's rights
- ⇒ Hundreds of citations to controlling case law

## **Battling The Administration**

by, David J. Meister

ISBN: 9781940638034 555 pages

Send check or money order to:

**Wynword Press**

**P.O. Box 557**

**Bonniers Ferry, ID 83805**

Include your full Name, DOC#, Institution name and your complete address.

Order online at: [www.wynwordpress.com](http://www.wynwordpress.com)

**Tel(208)267-0817**

**\$34.95**

**Price includes shipping**

# Seventh Circuit: Indiana Malicious Prosecution Claim Cognizable via § 1983

by Mark Wilson

ON OCTOBER 21, 2013, THE SEVENTH Circuit Court of Appeals reversed a district court's dismissal of a former prisoner's malicious prosecution claim.

While investigating a March 2001 burglary-arson at a high school in Frankton, Indiana, police officers, "without any lawful reason, decided that Billy Julian should be a suspect." They coerced another suspect and other witnesses into fingering Julian. Police investigators "knew the accusations were false – the officers had fabricated them and fed them to the witnesses."

Julian was criminally charged in April 2001, and convicted and sentenced to 15 years in prison in March 2003. He later prevailed in a post-conviction appeal by proving that a key prosecution witness had lied about being at the crime scene with him. The witness was on house arrest and wearing a GPS monitor at the time, and the monitor indicated that he had not left his home on the night the crime occurred.

Julian was released from prison in 2006. After the state unsuccessfully appealed, prosecutors decided to retry him in December 2007.

Police threatened Julian in an effort to deter him from pursuing a malicious prosecution lawsuit, and his attorney advised him not to file suit until after the retrial. The charges were finally dismissed in July 2010, and Julian filed a complaint in federal court in November 2011.

The district court dismissed the suit, holding that it was time-barred and could not be brought under 42 U.S.C. § 1983 because Indiana law provided an adequate remedy for malicious prosecution claims.

The Seventh Circuit reversed. Citing *Heck v. Humphrey*, 512 U.S. 477 (1994), the

appellate court first concluded that Julian's cause of action accrued when the charges were dismissed in 2010, not when his conviction was reversed in 2006. Therefore, his 2011 complaint was filed within the applicable two-year statute of limitations.

The Court of Appeals also held that Julian's malicious prosecution claim could be brought under § 1983 because Indiana law does not provide an adequate remedy for malicious prosecutions by state officers.

"After being released from prison in May 2006, Julian remained in limbo for more than four years," the appellate court wrote. "Limbo is not as bad as hell, but it's sufficiently bad that it can't be written off completely. Yet that is what the defendants

ask us to do: recognize no remedy for malicious prosecution by Indiana public officers, leaving the defendant remediless if he manages to avoid jail or prison for any of the time during which he's being maliciously prosecuted."

The Seventh Circuit further directed the district court to decide on remand if equitable estoppel prohibits the defendants from asserting a statute of limitations defense against Julian's separate claim that prosecutors withheld exculpatory evidence in his case. See: *Julian v. Hanna*, 732 F.3d 842 (7th Cir. 2013).

The case remains pending on remand, with a trial date scheduled in May 2015.

## Report: Prisons in Honduras are Dangerous, Violent and Corrupt

by Matt Clarke

WHEN A FEBRUARY 2012 FIRE AT A prison in Comayagua, Honduras killed 361 prisoners after guards abandoned their posts – leaving the prisoners to die in their cells – there was hope that the resulting international attention focused on the prison crisis in the Central American nation might lead to reforms. [See: *PLN*, July 2013, p.52]. However, such reforms have failed to materialize.

Take, for example, the prison at San Pedro Sula (SPS), which the Associated Press was allowed to tour in May 2012. The prison, built for 800, houses over 2,000 prisoners. And the guards were not in control of the overcrowded facility – the prisoners were.

When the AP made arrangements to visit SPS, they didn't seek authorization from prison officials; rather, they needed permission from the prisoner in charge, Noe Betancourt. Betancourt even provided a security team of eight prisoners to escort the journalists during their tour of the facility.

The prison is essentially an autonomous town complete with women, children, businesses and a marketplace. What the AP reporters didn't see was any guards. During the day, guards do not go past a painted

yellow line in the outer section of the prison, and prisoners do not cross it from the inner areas of the compound. That line is called "the line of death," according to a report released in August 2013 by the Inter-American Commission on Human Rights (ICHR). [See: *PLN*, Jan. 2014, p.56].

"Internal control of the prisons has been ceded into the hands of the prisoners themselves," the report stated, noting that prisoners control all 24 correctional facilities in Honduras.

The ICHR report said there are two padlocks on the prison gate: the guards lock the padlock on the outside and the prisoners lock the one on the inside. Honduran authorities admitted they "have no power to change anything."

The system of prisoners running the prisons is not unusual in Honduras; rather, it is the standard model according to the report. And inside the prisons either side can literally get away with murder.

No guards were prosecuted for abandoning prisoners to a fiery death at Comayagua in 2012. Likewise, when the prisoners at SPS were fed up with their leader, Mario Enriquez, and killed him

### Actual Innocence

Explains how the innocent are convicted by faulty eyewitness testimonies, police perjury, expert witnesses, prosecutorial misconduct, etc., and how DNA testing is used to free the innocent.

\$17.00 from PLN's Book Store!  
See page 61 for more information.

along with 13 of his followers two weeks after the fire, no charges were filed.

The prisoners had put up with Enriquez's brutal abuse, but when he sharply increased the fees they must pay for everything from food and cell space to permission to run a business, and his followers raped a visitor at the facility, outraged prisoners cut off Enriquez's head, removed his heart and fed it to his dog. Then they killed the dog.

The ICHR report said prison overcrowding was primarily responsible for the huge death toll in the fire at SPS. Overcrowding is rampant in Honduran prisons, with antiquated buildings housing, in at least two facilities, twice as many prisoners as they were originally designed to accommodate. The report also listed other significant concerns, including a "lack of appropriate, safe physical installations, deplorable health and hygiene conditions, failure to provide adequate food and drinking water and the lack of adequate medical care."

The report further detailed a black market economy in many Honduran prisons, where prisoners buy and sell food, clothing and household items in marketplaces that are not regulated and subject to corruption.

At San Pedro Sula, for example, the prison yard is the site of a huge bazaar that includes "barbers' shops, cafeterias, bakeries, sales of fruit and food of all kinds, sales of medications and cloth, tailoring workshops, a cobbler's shop, a leather workshop, carpentry, a cabinetmaker's workshop, crafts, manufacture of mirrors, billiard tables, games tables and many soft drink dispensing machines."

The Honduran government admitted there is little it can do, calling prisoners' control of the facilities a "necessary evil."

"This system, as was observed, is accepted by the prison authorities as the only viable way of maintaining order and stability between them and the prison populations, and the 'coordinators' [prisoners with special privileges] are considered collaborators and even allies of the authorities."

The ICHR report said the "coordinators" have a wide range of responsibilities, including applying punishment as discipline, setting the prices that prisoners must pay to live in cells, establishing pricing for food and resolving any conflicts.

"Above all," the report noted, "the 'coordinators' serve as spokesmen or liaisons with the prison authorities, and are really privileged

prisoners who exercise a degree of decision-making power within the prisons, often sharing the benefits with the prison authorities."

Government officials acknowledge that allowing prisoners to take charge of the prisons is a major factor in terms of corruption. Funds collected by the leader of the prisoners at SPS, for example, are shared with the prison administration, which claims to use the money to pay for prisoner upkeep. Costs range from \$50 for the worst cells to \$750 for a clean, safer cell. One prisoner pays \$25 a week for permission to run a restaurant.

According to prison officials, the money is necessary to operate the underfunded prison. SPS administrator Hugo Hernandez said he receives about \$250 per prisoner per year from the government's budget and, without the \$6,000 a month that is his share of the fees, he would not have funds to pay for maintenance, gas to transport prisoners to court, supplies for the prison hospital or sufficient food.

"For some it's corruption, but for us it's the only way to keep the system from breaking apart," noted assistant prison director Carlos Polanco.

On August 3, 2013, one day after the ICHR report was released, clashes involving gang members at a National Penitentiary prison in Tamara left three prisoners dead and at least 15 people injured, including three guards. The facility houses over 3,300 prisoners.

Following the violent disturbance, Honduran President Porfirio Lobo announced he was sending in military troops to regain control over the facility. In a statement, Lobo said the goal of putting soldiers in charge of the prison was to "end the reign of criminals in our prison system, which has done so much damage to our society." [See: *PLN*, Jan. 2014, p.56]. ■

Sources: *Associated Press*, *CNN*, *www.usa-today.com*, *www.insightcrime.org*

### Writing to Win

Need to write better? *Writing to Win* will teach you the basics of how to compose clear and convincing written and oral legal arguments! 270 pages packed with solid, practical advice and tips.

\$19.95 from PLN's Book Store!  
See page 61 for more information.

## INMATE

CONNECTIONS.COM®

465 NE 181<sup>st</sup> Ave. #308

Portland, OR 97230

[www.ConvictPenPals.com](http://www.ConvictPenPals.com)



Email & Federal Corrlinks users:

[Info@Convictpenpals.com](mailto:Info@Convictpenpals.com)

## PEN PALS

Get your profile on the  
craziest, exciting Pen Pal  
Web sites for Singles,  
Fetishes, Foreign ladies,  
GLBT, Mexican, Religious,  
African American & More.

**3 WEB SITES \$24.<sup>98</sup>**

We Post your Profile  
on 3 Pen Pal Websites.  
Choose your 3 Web sites  
from our new up to date  
list of Specialty Sites.

**FREE BONUS**  
New Pen Pal Catalog

NOW Contains up-to date  
snail-mail contacts for  
Free Pen Pal Ads in the  
USA and overseas. PLUS  
complete details of the top  
20 fee based prisoner  
Pen Pal web sites in USA.  
**ORDER TODAY**

**Rated 10 by Inmate Shopper**

Get posted on 3 websites  
and our Pen Pal Catalog:  
Send \$24.98 Free Shipping  
Inmate Shopper - PEN PALS  
PO Box 4311  
Mission, TX 78574  
[Corrlinks:info@inmategifts.net](mailto:Corrlinks:info@inmategifts.net)

# Ninth Circuit Vacates FRCP 4(m) Dismissal Without Notice

by Mark Wilson

**T**HE NINTH CIRCUIT COURT OF APPEALS held on October 30, 2013 that a district court's failure to provide notice before dismissing a complaint for non-service and denying leave to amend were abuses of discretion.

Nevada state prisoner John Crowley suffers from bipolar disorder, delusions, Parkinson's disease and hypertension. While confined at the Lovelock Correctional Center (LCC), he was prescribed Lithium three times a day.

After Crowley was transferred to the High Desert State Prison on April 16, 2009, however, his prescription for Lithium was changed to larger doses twice a day. Prison officials claimed that Dr. Daniel Sussman altered the prescription, though he had not examined Crowley.

On May 10 and 14, 2009, Crowley's cellmate alerted medical staff that Crowley was unresponsive and acting "bizarre." They did nothing until admitting him to the infirmary on May 16, when a guard reported similar unusual behavior.

A physician examined Crowley two days later and sent him to a hospital emergency room. He remained hospitalized for three weeks, undergoing treatment for Lithium toxicity and dehydration.

Crowley filed suit in federal court alleging that prison medical staff were deliberately indifferent to his serious medical condition. After the complaint was dismissed on initial screening, he filed his first amended complaint. Before the court or defendants took any action, Crowley filed a second amended complaint and requested leave to amend again once he learned the names of the correct defendants.

The district court issued an April 25, 2011 order directing the Nevada Attorney General (AG) to advise the court within 21 days whether she would accept service for the named defendants. The order also directed Crowley to "file a motion requesting the issuance of a summons and specifying a full name and address" for any defendant for whom the AG refused service, within 120 days of the refusal.

Crowley's copy of the order was returned to the court as undeliverable on May 2, 2011, because he had been transferred back to LCC. The order was not resent

because the district court did not have Crowley's current address.

On May 9, 2011, Crowley notified the court of his address change, but the April 25 order was never sent to him at LCC.

Dr. Sussman was the only defendant for whom the AG refused service. Crowley did not serve Dr. Sussman within 120 days, and the district court *sua sponte* dismissed the action against Sussman without providing notice to Crowley under FRCP 4(m).

The court then granted summary judgment to all the remaining defendants and dismissed the case without ruling on Crowley's motion to amend his complaint.

Crowley appealed and the Ninth Circuit reversed the dismissal of the claims against Dr. Sussman.

"Because the record does not reflect that the district court provided the required Rule 4(m) notice prior to the entry of judgment in favor of Dr. Sussman," the

Court of Appeals found that Crowley "was 'precluded from attempting to show good cause' or excusable neglect for his failure to serve Dr. Sussman in a timely manner." As such, the district court had abused its discretion.

The appellate court also concluded that denying Crowley leave to amend "to name the correct defendants and to discover whether any delays on their part in providing medical treatment caused or exacerbated his Lithium toxicity" was an abuse of discretion. The district court's grant of summary judgment to the other defendants was affirmed. Accordingly, the Ninth Circuit vacated in part, affirmed in part and remanded the case for further proceedings.

Following remand, the district court granted Crowley's motion to appoint counsel on May 8, 2014. The case remains pending. See: *Crowley v. Bannister*, 734 F.3d 967 (9th Cir. 2013). ■

## Kansas DNA Testing Eligibility Extended to Second-Degree Murder

by Mark Wilson

**T**HE KANSAS SUPREME COURT HELD on October 4, 2013 that a state law denying DNA testing to prisoners convicted of second-degree murder violates the Equal Protection Clause of the Fourteenth Amendment.

Kansas prisoners convicted of first-degree murder or rape may petition for post-conviction DNA testing under K.S.A. 21-2512. Second-degree murderers, however, are ineligible for similar DNA testing.

In 1993, Jerome Cheeks was convicted of second-degree murder and sentenced to 15 years to life imprisonment. Over a decade later he filed a pro se petition, pursuant to § 21-2512, for DNA testing of 30 items collected from the crime scene. His petition was summarily denied, with the court finding that Cheeks was ineligible for DNA testing under the statute's plain language.

The Kansas Supreme Court reversed, concluding that first- and second-degree murderers are "similarly situated" because they receive the same maximum sentence

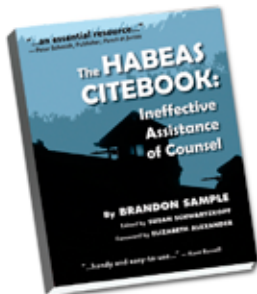
of life imprisonment.

The Court then applied the "rational basis test," noting that it had previously held in *State v. Denney*, 278 Kan. 643, 101 P.3d 1257 (Kan. 2004), that neither cost nor severity of the crime justifies excluding similarly situated offenders from DNA testing eligibility.

Following *Denney* and conceiving of no rational basis for barring second-degree murderers from DNA testing, the Court concluded that "K.S.A. 21-2512 violates the Equal Protection Clause and is unconstitutional."

Rather than invalidate § 21-2512, however, the Supreme Court extended "the benefits of the statute to include those improperly omitted." As such, the Court reversed and directed the lower court to determine on remand "whether Cheeks satisfied the remaining statutory requirements entitling him to DNA testing under K.S.A. 21-2512." Three justices issued dissenting opinions. See: *Kansas v. Cheeks*, 298 Kan. 1, 310 P.3d 346 (Kan. 2013). ■





**The Habeas Citebook: Ineffective Assistance of Counsel**  
**Brandon Sample**  
 ISBN: 978-0-9819385-1-6  
 Paperback, 224 pages

**\$49.95**

The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an invaluable resource that identifies hundreds of cases where the federal courts have granted habeas relief to prisoners whose attorneys provided ineffective assistance of counsel.



**Prisoners' Guerrilla Handbook to Correspondence Programs in the United States and Canada, 3rd Edition**  
**Jon Marc Taylor**  
 ISBN: 978-0-9819385-0-9  
 Paperback, 224 Pages

**\$49.95**

The greatly anticipated and newly updated third edition of the Prisoner's Guerrilla Handbook to Correspondence Programs in the United States and Canada has finally arrived! Author Jon Marc Taylor's brand new version is the latest in this unique and highly successful guidebook for the prisoner-student. This invaluable tool and how-to handbook provides the reader with step-by-step instructions to find the appropriate education program for correspondence high school, vocational, paralegal, undergraduate, and graduate courses offered in the U.S. and Canada today.



**Prisoners' Self-Help Litigation Manual, 4th Edition**  
**John Boston & Dan Manville**  
 ISBN: 978-0-1953744-0-7  
 Paperback, 960 pages

**\$45.95**

Prisoners' Self-Help Litigation Manual, in its much-anticipated fourth edition, is an indispensable guide for prisoner litigants and prisoner advocates seeking to understand the rights guaranteed to prisoners by law and how to protect those rights. Clear, comprehensive, practical advice provides prisoners with everything they need to know on conditions of confinement, civil liberties in prison, procedural due process, the legal system, how to actually litigate, conducting effective legal research, and writing legal documents. It is a roadmap on how to win lawsuits.

- ☐ Habeas Citebook,  
Ineffective Assistance of Counsel  
\$49.95
- ☐ Prisoners' Guerrilla Guide to  
Correspondence Programs  
3rd edition  
\$49.95
- ☐ Prisoners' Self-Help  
Litigation Manual  
4th edition  
\$45.95

**Shipping included in all prices**

**Order by mail, phone, or on-line.** Amount enclosed \_\_\_\_\_  
 By: ☐ check ☐ new postage stamps ☐ credit card ☐ money order  
 Name \_\_\_\_\_  
 DOC/BOP Number \_\_\_\_\_  
 Institution/Agency \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_ ZIP \_\_\_\_\_

PUBLISHED BY

**PRISON LEGAL NEWS**  
 Dedicated to Protecting Human Rights

PO Box 1151 • Lake Worth, FL 33460  
 Tel 561-360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

## News in Brief

**Alabama:** As previously reported in *PLN*, former Clay County jail administrator Jeffrey “Scott” Cotney filed a lawsuit alleging defamation, slander, libel and other claims related to accusations that he had used his position at the jail to sexually abuse prisoners. [See: *PLN*, March 2014, p.36]. On November 27, 2013, a federal grand jury indicted Cotney on eight counts of deprivation of rights under color of law in connection with those same accusations. He pleaded guilty to the charges and was sentenced in May 2014 to four years in federal prison.

**Albania:** On November 23, 2013, seven prisoners serving life sentences for murder escaped from the Drenova Prison. Police described the escapees as armed and dangerous, and advised residents to remain behind closed doors. The neighboring countries of Greece and Macedonia also were warned of the escape, which involved the prisoners disarming a guard and fleeing by car during severe weather, resulting in a massive manhunt.

**Arizona:** On November 22, 2013, the Arizona Department of Corrections issued a press release describing the arrests of a former guard and an ASPC Winslow prisoner who had allegedly extorted another prisoner and his family. The scheme involved former guard Jordan Martie, who demanded protection money from a prisoner after he was threatened by Martie’s unnamed prisoner-accomplice. “This now-former officer betrayed his oath, compromised his position and placed many others at risk by allegedly engaging in criminal activity,” said ADC Director Charles L. Ryan. “I will urge that he and the suspect inmate be prosecuted to the fullest extent of the law.”

**Arizona:** Pink underwear, horrendous food and around-the-clock holiday music are just some of the indignities faced by prisoners held in Sheriff Joe Arpaio’s Maricopa County jails. In 2005, Arpaio ordered that holiday cheer be mandatory in all jail facilities by forcing prisoners and staff alike to listen to continuous Christmas melodies from Alvin and the Chipmunks, Elvis Presley and others. In December 2013, however, in response to complaints that the music was more irritating than joyful, Arpaio scaled back the holiday songs to two hours in the morning and two hours in the evening.

**Australia:** As Victoria’s prison population stretches its available bed space to the breaking point, authorities have come up with a solution. Fifty shipping containers were installed in December 2013 to house minimum-security prisoners at the Dhurringile prison in northern Victoria; Corrections Commissioner Jan Shuard said they were part of a larger plan to deal with unprecedented growth in the state’s prison population. The containers each house two men and are fully equipped with a toilet, shower, beds and cupboards. As of January 2014 over 50 low-risk prisoners had been moved into the shipping container-cells.

**California:** Every year since 1998, the Vietnam Veterans chapter at San Quentin has accepted donated toys for distribution to children visiting their incarcerated fathers around the holidays. In December 2013, San Quentin prison staff quashed the joy of gift-giving by not only limiting children to two toys each, but also taking toys back from some of the youngsters. Family members expressed frustration at the Grinch-like prison employees; San Quentin spokesman Sam Robinson confirmed that some toys had been confiscated from children, but explained that staff wanted to ensure fairness in the application of the two-toy policy to ensure that all children received toys.

**California:** At 11:39 a.m. on December 17, 2013, an oven explosion in the kitchen at the Santa Rita Jail critically injured one prisoner and wounded nine others. According to Alameda County Fire Department spokeswoman Aisha Knowles, six prisoners were treated at the jail’s infirmary while four were taken to local hospitals. One deputy was also treated for ringing in his ears. The Santa Rita Jail is the third-largest jail in California and serves as Alameda County’s main jail facility.

**California:** The *Fresno Bee* reported on December 14, 2013 that psychiatrist Pratap Narayan had been accused by the State Medical Board of negligence and incompetence while employed as a doctor at the Fresno County jail and, later, at Avenal State Prison. Dr. Narayan allegedly misdiagnosed mentally ill prisoners, prescribed medications without examining patients and recommended inadequate doses of psychiatric drugs. Narayan’s employment status at Avenal was under review after

the Medical Board’s inquiry, according to Dana Simas, a spokeswoman for the state prison system. An amended disciplinary complaint was filed against Dr. Narayan in July 2014.

**Canada:** On December 4, 2013, a Canadian court declined to address the case of two minimum-security prisoners who had petitioned to share housing as a same-sex couple at the Riverbend Annex in Prince Albert. The court instead decided that the prison’s grievance system was the proper channel for determining whether the couple should be allowed to share housing. Jean Richter and Leslie Sinobert are both serving life sentences at the Saskatchewan Penitentiary, but were transferred to the Annex. The facility has individual units that can house between eight and 10 prisoners. In May 2014, prison officials denied Richter and Sinobert’s request on the grounds that Sinobert needs special mental health housing.

**Colorado:** Thomas Wierdsma, a senior vice president with The GEO Group, a private prison firm that runs several immigration detention centers, will not face charges for threatening to use his position to deport his Hungarian-born daughter-in-law. Last year a jury in a civil case awarded \$1.2 million against Thomas and Charles Wierdsma, his son, for “outrageous conduct.” After Charles was arrested for beating his wife, Beatrix Szeremi, the elder Wierdsma attempted to evict Szeremi, who was in the United States legally, from the home she shared with Charles. He also tried to intimidate her into removing photos of her bruised face from her Facebook page. *PLN* originally broke this story in 2012. [See: *PLN*, March 2012, p.16]. On December 31, 2013, a spokesperson for the Boulder District Attorney’s office said no criminal charges would be filed against Thomas Wierdsma. The jury award in the civil case was later reduced to \$12,000 due to a state law cap on punitive damages.

**Florida:** The *Orlando Sentinel* reported on November 24, 2013 that an investigation into the mistaken release of an Orange County jail prisoner resulted in disciplinary action against four jail employees. Officials found that Alice Rodriguez, Kimberly Howard, Lydell Andreas and supervisor Shunta Heath had violated policy by failing to double-check John Lanard Baker’s release paperwork. Baker was allowed to

post bond and leave the jail when he was supposed to be returned to state custody. He remained free for nearly five months.

**Florida:** Assistant U.S. Attorney Malisa Chokshi said a former guard at the John E. Goode Pre-Trial Detention Facility received \$110,000 in false tax refunds after filing over 50 fraudulent returns. Harold Bush Walbey III was arrested on December 12, 2013 and pleaded guilty to stealing prisoners' names and Social Security numbers, ordering debit cards in their names, and filing income tax returns in 2010 and 2011 using the false identities. Walbey had worked for the Jacksonville Sheriff's Office from 1992 to February 2013; he is scheduled to go to trial in November 2014.

**Florida:** Alexander Lansky, a property clerk at the Pinellas County Jail, admitted to having an addiction to prescription pills when detectives interviewed him following complaints from two prisoners who said their legally-prescribed painkillers were missing from their property when they were released. The sheriff's office accused Lansky of stealing Vicodin, Percocet and morphine pills from five prisoners, and he was charged with five counts of grand theft and five counts of possession of prescription pills on October 22, 2013.

**Illinois:** Approximately one hour after speaking with his girlfriend in the visitors' area at Stateville Correctional Center on December 12, 2013, 33-year-old prisoner Angel Garcia jumped to his death from a fifth floor housing tier. He was taken to Provena Saint Joseph Medical Center with serious head trauma and other injuries, and

pronounced dead later that day. Garcia, who was not on suicide watch or classified as a mental health patient, was serving a 70-year sentence for murder.

**Indiana:** An Indianapolis security guard who called himself the "Night Lion" was found guilty on December 2, 2013 of 14 charges related to impersonating a police officer to coerce sex from prostitutes. At the time of the incidents, Nicholas Houston was employed as a guard by The GEO Group at a state facility in Plainfield. Prosecutors said Houston threatened the women with arrest if they refused to have sex with him. Deputy Prosecutor Rachel Jefferson told the jury that Houston, in his own words, said he "stalked his prey" and targeted young and vulnerable women.

**Kentucky:** In less than a week in December 2013, two former employees at the Blackburn Correctional Complex were arrested and charged with official misconduct and rape for engaging in illegal sexual relationships with prisoners. Jennifer Wiseman was charged on December 11, 2013 and Bernadette Luttrell was arrested on December 17, 2013. According to state prison officials, Wiseman worked as a guard and Luttrell was employed in the facility's mattress plant.

**Michigan:** On December 5, 2013, Mary Lucas was identified as the Mason County jailer who was involved in an October 2013 assault on another Mason County jail guard. The Michigan Sheriff's Association Missions Team turned over the results of its investigation into Lucas' alleged misconduct to the Mason County Prosecutor's Office. A

warrant was subsequently issued and Lucas, 46, was charged with assault and battery. She was released on a personal recognizance bond and placed on administrative leave pending the outcome of the case.

**Michigan:** Former Genesee County Sheriff's Deputy Amy Rebecca Gatica, 35, was arrested and charged with more than two dozen crimes related to smuggling drugs into the county jail and using a private physician's credentials to obtain prescription painkillers. On December 3, 2013, Gatica was ordered to return to court to face a preliminary examination after being denied admission to the county's drug court program. At the time of her arrest, cocaine and other drugs were found during a search of her home and vehicle. On June 23, 2014, Gatica was sentenced to 18 months' probation in exchange for pleading guilty to charges of cocaine possession and obtaining a controlled substance by fraud.

**Minnesota:** Angel Lynn Benjamin briefly escaped from MCF Shakopee on December 2, 2013 by running past the facility's fenceless perimeter. Although she was captured 23 minutes later, the escape renewed calls for a fence to be installed at the prison. Shakopee Mayor Brad Tabke said requests for a fence have been unsuccessful during several sessions of the Minnesota legislature. Since 1995, seven prisoners have escaped from MCF Shakopee and 18 planned escapes were thwarted. In May 2014 the legislature finally passed a bill that includes nearly \$5.4 million for a fence, although there is no timeline for its installation.



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription!

Quarterly drawing WINS \$100! (Void in New York)  
(Last Quarter's winner from Airway Heights, WA.)

**TELL YOUR FRIENDS! ACT NOW!!**



**PO Box 2063 • Fort Walton Beach FL. 32549**

**[www.InmateMagazineService.com](http://www.InmateMagazineService.com)**

## **Inmate Magazine Service**

## News In Brief (cont.)

**Nebraska:** On December 2, 2013, thirty-three prisoners at the Nebraska State Penitentiary refused to return to their cells for several hours in protest of a policy that limits the number of prisoners who can be on the recreation yard at the same time. Trash can fires set during the protest were quickly extinguished, and some prisoners had to be moved to other locations due to the smoke. No one was injured and there was no major damage, but the prison was placed on lockdown while staff investigated the incident and prepared disciplinary write-ups.

**New Jersey:** A plea agreement has been reached in the case of John Follo, 50, a retired guard who monitored youthful offenders on home detention in Essex County. On December 2, 2013, Follo admitted in

court that he was coaching a high school softball team during hours he had claimed to be on the job. He pleaded guilty to one count of tampering with public records, and prosecutors recommended that he serve three years in prison. Follo was a long-time county employee who served as president of the prison guard supervisors' union.

**New Zealand:** On December 11, 2013, prison officials reported that a major riot had been caused by prisoners drunk on home-brewed hooch, and as a result removed alcohol-based hand sanitizer from all prisons and limited the amount of fresh fruit that prisoners can have. Chief Executive Ray Smith said the measures would not solve the issue of alcohol production, but would reduce the risk of prisoners being able to accumulate fruit. During the 10-hour riot, prisoners used sports equipment as weapons, set cell blocks on fire and broke into staff areas. Twenty-three prisoners face

charges related to the disturbance.

**North Carolina:** Anita Kaye Vestal, 36, did it for love. The former Swain County jailer is accused of helping prisoner Jeffery Miles escape in March 2009 so the two could "be together." [See: *PLN*, May 2009, p.50]. On December 2, 2013, prosecutors closed the state's case against Vestal on charges of harboring an escapee, obstruction of justice and accessory after the fact to murder, and two days later the jury returned a guilty verdict. Vestal was sentenced to 34-41 months in prison. Miles and Vestal were the subject of a segment on "America's Most Wanted" after the escape, in which Vestal provided Miles with the keys to a jail door and the outer fence that surrounded the facility. They were captured in Vallejo, California in April 2009.

**Oregon:** John Edward Sipple, 69, a retired Oregon Department of Corrections employee, was arrested on October 31, 2013

## PLN Classifieds

### Help from Beyond the Walls

New Services and Fast Turnaround  
Pictures, publications, phone  
services and more. Write today  
for free brochure. P.O. Box 185,  
Springvale, ME 04083

### AMBLER DOCUMENT PROCESSING

Type, Design and Prepare  
Manuscripts for Self-Publishing  
Reasonable Rates! Accept all Genres!  
P.O. Box 938, Norwalk, CT 06852

### T&A Entertainment, LLC presents

Sexy non-nude women catalog  
\$6.99 (\$2.00 S&H) All photos \$1  
Payments: institutional check  
MO, MG and stamps (6 photos=1 BK)  
Photo reprints 55¢/5x7 \$4.49  
tandaentertainmentllc@gmail.com  
PO 10173 Newark NJ 07101

### WINNING LEGAL BRIEFS

Example legal briefs on prisoner  
issues that have WON favorable  
decisions in state & fed courts.  
For catalog send \$1.50 to W.  
Barron, 122 Lakeshore Dr, Unit  
704-D037, Lake Harmony, PA 18624  
\$1.50 credit towards your order.

### The VOICES.CON Newsletter – Free

Written by lifers for lifers. For info on how  
to receive Voices.Con monthly, send  
SASE to: PO Box 361, King City, CA 93930.  
On the web at: [VoicesDotCon.org](http://VoicesDotCon.org);  
Email: [Publisher@VoicesDotCon.org](mailto:Publisher@VoicesDotCon.org)

### FINALLY REAL LADIES/REAL LETTERS

Genuine, friendly, compassionate  
Writers! GUARANTEED RESPONSES!  
WE'RE WAITING FOR YOUR LETTERS!  
Send a SASE 4 this GREAT news!  
Nubian Princess Ent. Est 1998  
POB 37 PLN  
Timmons ville, SC 29161

### A DEGREE/ORDINATION FROM PRISON

Correspondence Courses via mail  
INT'L CHRISTIAN COLLEGE&SEMINARY  
PO BOX 530212 Debary, FL 32753-0212  
Associates thru PhD credit for  
Life Experience \*ACCREDITED\*  
Tuition as Low as \$19.95 a month  
Send SASE for a Free Evaluation

### Ms. Tahtianna Fermin

387 Sheperd Ave, Suite 3A  
Brooklyn, NY 11208  
All types of Legal Services  
Inexpensive, from all areas of  
law, information on anything.  
Specializing in all prison  
litigations/civil and criminal.

### INMATE SELF-HELP COURSES

Send SASE to: CORE P.O. Box 1361  
W. Sacramento, CA 95605 \$20.95ea  
6 Courses Avail. Accept stamp/MO  
EA Course completion awarded w/  
Certificate & Recognition Letter

### No Bull – Not a Scam

Direct from Inmateshopper.com  
400 Pen Pal addresses \$15.98  
15% with Photos. 50% American  
50% Overseas. No two lists are  
the same – RUSH \$15.98 TO:  
Inmate Shopper, Box 4311  
Mission, TX 78574 INFO/SASE

### IF YOU WANT THE BEST TRY EPS!

Legal Research & Forms, Internet  
& People Searches, Amazon Books,  
Erotic Photos & Stories, PenPals,  
Special Requests and Much More.  
Send SASE to: Elite Paralegal &  
Prisoner Services, PO Box 1717,  
Appleton, WI 54912

### FREE PULP-FICTION CATALOG

Send \$3.99 USD for S&H  
This is a 136-page catalog with  
1650+ story/novel entries  
Detective, Mystery, Air, Western  
Horror, Action, Science Fiction+  
Jaguar Books 6881 Stanton Ave #F  
Buena Park CA 90621



on six counts of first-degree theft related to approximately \$35,000 in missing funds from the Inmate Welfare account at the Oregon State Correctional Institution in Salem. Sipple had worked for the prison system for 29 years and was lauded in a performance evaluation for ensuring the funds were "used appropriately." An audit earlier in 2013 revealed that approximately \$26,000 was missing from deposits made by visitors for use of storage lockers. That investigation was closed when detectives could not uncover enough evidence to make an arrest in the theft. In May 2014, Sipple pleaded guilty to five counts of first-degree theft; he was placed on three years' probation and agreed to pay \$31,729.38 in restitution. He had retired in 2012 and the guilty plea will not affect his state pension.

**Pakistan:** On November 29, 2013, over a dozen female prisoners at a jail in Lahore were rushed to a hospital when they became sick after eating food contaminated by a lizard that fell into the cooking pot the day before. Chicken curry prepared in the pot was being served to the prisoners when the incident occurred; according to news reports, authorities stopped serving the food when the women began to get sick. Deputy Inspector General of Police

and Prisons Malik Mubashar said an investigation had been launched into the food poisoning incident.

**Sweden:** In early November 2013, a Swedish prisoner escaped to go to the dentist because he "just couldn't stand" the pain from a toothache he had complained about to prison officials for four days. The unidentified 51-year-old prisoner had been sentenced to one month behind bars and was scheduled to be released the day after he escaped. He surrendered to police once his tooth had been treated. According to news reports, the escape resulted in his sentence being extended by one day.

**Syria:** The Syrian Network for Human Rights reported in December 2013 that six prisoners froze to death at the Aleppo Central Prison. The facility houses over 4,000 prisoners and is often plagued by attacks from opposition groups in addition to very cold weather. Previously, 10 other prisoners at the facility had died due to freezing temperatures. Some 50,000 people in the war-torn nation struggle with the cold, and at least 16 children have died due to the frigid weather.

**Texas:** According to a November 20, 2013 report by ABC TV affiliate KTRE, former Angelina County jailer Stevon

Eugene Crowder, 53, was indicted on three felony charges and eight class A misdemeanors for sexually harassing and abusing female trustees who worked for him in the jail's kitchen. The prisoners and one of their family members filed a complaint that led to an investigation by the Angelina County Sheriff's Office; interviews were conducted with prisoners in Angelina County and at Texas Department of Criminal Justice facilities in Henderson, Coryell and Burnett counties. One of the prisoners said Crowder had treated them like "pieces of meat."

**Texas:** On November 11, 2013, Michael Logan Brown was fooling around with some friends and got his hand stuck in a set of handcuffs. Finding himself without a key, Brown decided to visit the local police station. That might have been a good idea had he not had a small amount of marijuana in his front pocket or an outstanding warrant for criminal mischief. He did, however, and Brown traded the handcuffs for a jail cell and now faces two misdemeanor charges.

**Texas:** A former guard at the privately-operated Jack Harwell Detention Center was among at least five employees arrested in October 2013 during an ongoing investigation into improprieties between staff and

#### **MIDNIGHT EXPRESS BOOKS**

THE PREFERRED & ONLY FULL TIME  
company helping inmate authors  
publish books for 10+ years.  
PO Box 69, Dept PLN,  
Berryville, AR 72616  
Midnightexpressbooks.com  
Corrlinks: MEBooks1@yahoo.com

#### **FREE BOOK CATALOG & PRAYER CARD**

Send \$1 for S&H or  
SASE w/2 (two) US Forever Stamps  
Fiction, Nonfiction, Dictionary,  
Pastimes & Religious books  
English & Spanish.  
Jaguar Books, 6881 Stanton Ave #F  
Buena Park, CA 90621

#### **Education Behind Bars Newsletter**

Free electronic newsletter  
For prisoners via CorrLinks.  
Add news@prisonlawblog.com  
to subscribe. The content  
is curated specifically  
for prisoners.

#### **SURROGATE SISTERS**

Celebrating 18+Years in Business  
No Games. We Sell Photos of Sexy  
Women, Gifts for Loved Ones,  
Erotic Stories & Pen-Pal Service  
Free Info & Flyer Send SASE to:  
Surrogate Sister - PN  
PO Box 95043, Las Vegas NV 89193

#### **Prisonerinmatefamilyservice.com**

Send a SASE for a free catalog;  
PO Box 1852, Pismo Beach, CA 93448  
We buy stamps- 7.50 a book;  
Single stamps .25 cents; Amazon  
Orders, copies of photos/artwork  
And SO much more!  
FamilyInmateSev@aol.com

#### **LOCAL PHONE NUMBERS \$2.50/MO.**

USA anywhere 5¢/min. To MX 15¢  
Great rates all over the world!  
No signup fee, no hidden fees!  
Refer new cust, 300 free mins!  
[www.FreedomLine.net](http://www.FreedomLine.net) to sign up  
or write FreedomLine, Box 7-WCB  
C'ville IN 47331. Save BIG \$\$\$!

#### **\*\*Bottle Thoughts Gift Store\*\***

Show someone you are thinking of  
them by sending a Special Gift  
Send SASE for FREE Brochure  
PO Box 110752, Carrollton, TX 75011  
Corrlinks:sales@bottlethoughts.com  
Contact us 1-877-705-0425  
FREE Shipping on All Gift Orders

#### **Celebrity Photos For Sale:**

Send self addressed stamped  
envelope for lists. Name stars  
you would like to order photos of.  
Start your collection today!  
Photoworld-PLN  
PO Box 401016  
Las Vegas, NV 89140

#### **How to get girls while in prison**

"The best techniques & methods to  
get more girls than u can handle  
even though u are locked up"  
Send SASE for your free report:  
The Convict's Education Group  
19141 Stone Oak Pkwy #104  
Dept.: A. San Antonio, TX 78258

prisoners at the facility. Melissa Suzanne Corona was indicted on March 20, 2014 on a charge of improper sexual activity with a person in custody. According to an affidavit, Corona had sexual contact with a prisoner at the facility on at least two occasions.

**Virginia:** A former probation officer with the Virginia Department of Corrections was indicted by a grand jury on September 3, 2013 on drug, sex and bribery charges. Meaghan Fields, 29, was employed

at the VDOC's Staunton office from October 2010 through September 2012. On January 27, 2014, she entered Alford pleas to two counts of felony carnal knowledge for having sexual encounters with a probationer. "I will not tolerate actions by those in positions of power which would erode the public's confidence in our criminal justice system and our government as a whole," said Attorney General Mark Herring.

**West Virginia:** Former Clay County Sheriff Miles Slack has his ex-wife to thank for being placed on probation after she made an emotional appeal for leniency

as Slack was being sentenced on federal wiretapping charges. In an attempt to monitor his then-wife's activities, Slack had surreptitiously installed a keystroke logger on the computer she used at her job in the Clay County magistrate court's office. At Slack's December 19, 2013 sentencing hearing, U.S. District Court Judge John T. Copenhaver, Jr. considered letters of support and a 700-signature petition when imposing a sentence of 1-2 years' probation and a \$1,000 fine. Slack, who could have faced up to five years in prison, resigned from the sheriff's office in September 2013. ■

## **Criminal Justice Resources**

### **ACLU National Prison Project**

Handles state and federal conditions of confinement claims affecting large numbers of prisoners. Publishes the NPP Journal (available online at: [www.aclu.org/national-prison-project-journal-fall-2011](http://www.aclu.org/national-prison-project-journal-fall-2011)) and the Prisoners' Assistance Directory (write for more information). Contact: ACLU NPP, 915 15th St. NW, 7th Fl., Washington, DC 20005 (202) 393-4930. [www.aclu.org/prisons](http://www.aclu.org/prisons)

### **Amnesty International**

Compiles information about prisoner torture, beatings, rape, etc. to include in reports about U.S. prison conditions; also works on death penalty issues. Contact: Amnesty International, 5 Penn Plaza, New York NY 10001 (212) 807-8400. [www.amnestyusa.org](http://www.amnestyusa.org)

### **Center for Health Justice**

Formerly CorrectHELP. Provides information related to HIV in prison – contact them if you are not receiving proper HIV medication or are denied access to programs due to HIV status. Contact: CHJ, 900 Avila Street, Suite 102, Los Angeles, CA 90012. HIV Hotline: (214) 229-0979 (collect calls from prisoners OK). [www.centerforhealthjustice.org](http://www.centerforhealthjustice.org)

### **Centurion Ministries**

Works to exonerate the wrongfully convicted, in both cases involving DNA evidence and those that do not. Centurion only takes 1-2 new cases a year involving actual innocence. They do not consider accidental death or self-defense murder cases, he said/she said rape cases, or child abuse or child sex abuse cases unless there is physical evidence. All case inquiries must be from the prisoner involved, in writing. Contact: Centurion Ministries, 221 Witherspoon Street, Princeton, NJ 08542 (609) 921-0334. [www.centurionministries.org](http://www.centurionministries.org)

### **Critical Resistance**

Seeks to build an international movement to abolish the Prison Industrial Complex, with offices in Florida, California, New York, Texas and Louisiana. Publishes The Abolitionist newsletter. Contact: Critical Resistance, 1904 Franklin Street #504, Oakland, CA 94612 (510) 444-0484. [www.criticalresistance.org](http://www.criticalresistance.org)

### **The Exoneration Project**

The Exoneration Project is a non-profit organization dedicated to working to free prisoners who were wrongfully convicted. The Project represents innocent individuals in post-conviction legal proceedings; typical cases involve DNA testing, coerced confessions, police misconduct, the use of faulty evidence, junk science and faulty eyewitness testimony, and ineffective assistance of counsel claims. Contact: The Exoneration Project, 312 North May Street, Suite 100, Chicago, Illinois 60607 (312) 789-4955. [www.exonerationproject.org](http://www.exonerationproject.org)

### **Family & Corrections Network**

Primarily provides online resources for families of prisoners related to parenting, children of prisoners, prison visitation, mothers and fathers in prison, etc. Contact: F&CN, 93 Old York Road, Suite 1 #510, Jenkintown, PA 19046 (215) 576-1110. [www.fcnetwork.org](http://www.fcnetwork.org)

### **FAMM**

FAMM (Families Against Mandatory Minimums) publishes the FAMMgram three times a year, which includes information about injustices resulting from mandatory minimum laws with an emphasis on federal laws. Recommended donation of \$10 for a subscription. Contact: FAMM, 1612 K Street NW #700, Washington, DC 20006 (202) 822-6700). [www.famm.org](http://www.famm.org)

### **The Fortune Society**

Provides post-release services and programs for prisoners in the New York City area and occasionally publishes Fortune News, a free publication for prisoners that deals with criminal justice issues, primarily in New York. Contact: The Fortune Society, 29-76 Northern Blvd., Long Island City, NY 11101 (212) 691-7554. [www.fortunesociety.org](http://www.fortunesociety.org)

### **Innocence Project**

Provides advocacy for wrongly convicted prisoners whose cases involve DNA evidence and are at the post-conviction appeal stage. Maintains an online list of state-by-state innocence projects. Contact: Innocence Project, 40 Worth St., Suite 701, New York, NY 10013 (212) 364-5340. [www.innocenceproject.org](http://www.innocenceproject.org)

### **Just Detention International**

Formerly Stop Prisoner Rape, JDI seeks to end sexual violence against prisoners. Provides counseling resources for imprisoned and released rape survivors and activists for almost every state. Contact: JDI, 3325 Wilshire Blvd. #340, Los Angeles, CA 90010 (213) 384-1400. [www.justdetention.org](http://www.justdetention.org)

### **Justice Denied**

Although no longer publishing a print magazine, Justice Denied continues to provide the most comprehensive coverage of wrongful convictions and how and why they occur. Their content is available online, and includes all back issues of the Justice Denied magazine and a database of more than 3,000 wrongly convicted people. Contact: Justice Denied, P.O. Box 68911, Seattle, WA 98168 (206) 335-4254. [www.justicedenied.org](http://www.justicedenied.org)

### **National CURE**

Citizens United for Rehabilitation of Errants (CURE) is a national organization with state and special interest chapters that advocates for rehabilitative opportunities for prisoners and less reliance on incarceration. Publishes the CURE Newsletter. \$2 annual membership for prisoners. Contact: CURE, P.O. Box 2310, National Capitol Station, Washington, DC 20013 (202) 789-2126. [www.curenational.org](http://www.curenational.org)

### **November Coalition**

Publishes the Razor Wire, a bi-annual newsletter that reports on drug war-related issues, releasing prisoners of the drug war and restoring civil rights. A subscription is \$10 for prisoners and \$30 for non-prisoners. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 684-1550. [www.november.org](http://www.november.org)

### **Prison Activist Resource Center**

PARC is a prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, able-ism, heterosexism and classism, specifically within the Prison Industrial Complex. PARC produces a free resource directory for prisoners, and supports activists working to expose and end the abuses of the Prison Industrial Complex and mass incarceration. Contact: PARC, P.O. Box 70447, Oakland, CA 94612 (510) 893-4648. [www.prisonactivist.org](http://www.prisonactivist.org)

# Prison Legal News Book Store

Fill in the boxes next to each book you want to order, indicating the quantity and price. Enter the Total on the Order Form on the next page.  
**FREE SHIPPING on all book / index orders OVER \$50 (effective 4-1-2014 until further notice). \$6.00 S/H applies to all other book orders.**

## SUBSCRIBE TO PLN FOR 4 YEARS AND CHOOSE ONE BONUS!

1. SIX (6) FREE ISSUES FOR 54 TOTAL! OR
2. PRISON PROFITEERS (A \$24.95 VALUE!) OR
3. THE HABEAS CITEBOOK (A \$49.95 VALUE!)

**Prison Profiteers**, edited by Paul Wright and Tara Herivel, 323 pages. \$24.95. This is the third book in a series of Prison Legal News anthologies that examines the reality of mass imprisonment in America. *Prison Profiteers* is unique from other books because it exposes and discusses who profits and benefits from mass imprisonment, rather than who is harmed by it and how. 1063

**The Habeas Citebook: Ineffective Assistance of Counsel**, by Brandon Sample, PLN Publishing, 200 pages. \$49.95. This is PLN's second published book, written by federal prisoner Brandon Sample, which covers ineffective assistance of counsel issues in federal habeas petitions. Includes hundreds of case citations! 1078

**Prison Nation: The Warehousing of America's Poor**, edited by Tara Herivel and Paul Wright, 332 pages. \$35.95. PLN's second anthology exposes the dark side of the 'lock-em-up' political agenda and legal climate in the U.S. 1041

**The Ceiling of America, An Inside Look at the U.S. Prison Industry**, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. \$22.95. PLN's first anthology presents a detailed "inside" look at the workings of the American justice system. 1001

**Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada**, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, PLN Publishing, 221 pages. \$49.95. Written by Missouri prisoner Jon Marc Taylor, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, para-legal and college courses by mail. 1071

**The Criminal Law Handbook: Know Your Rights, Survive the System**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 608 pages. \$39.99. Explains what happens in a criminal case from being arrested to sentencing, and what your rights are at each stage of the process. Uses an easy to understand question-and-answer format. 1038

**Represent Yourself in Court: How to Prepare & Try a Winning Case**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 528 pages. \$39.99. Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. The authors explain what to say in court, how to say it, etc. 1037

**Law Dictionary**, Random House Webster's, 525 pages. \$19.95. Comprehensive up-to-date law dictionary explains more than 8,500 legal terms. Covers civil, criminal, commercial and international law. 1036

**The Blue Book of Grammar and Punctuation**, by Jane Straus, 110 pages. \$14.95. A guide to grammar and punctuation by an educator with experience teaching English to prisoners. 1046

**Legal Research: How to Find and Understand the Law**, by Stephen Elias and Susan Levinkind, 568 pages. \$49.99. Comprehensive and easy to understand guide on researching the law. Explains case law, statutes and digests, etc. Includes practice exercises. 1059

**Deposition Handbook**, by Paul Bergman and Albert Moore, Nolo Press, 352 pages. \$34.99. How-to handbook for anyone who conducts a deposition or is going to be deposed. 1054

**Criminal Law in a Nutshell**, by Arnold H. Loewy, 5th edition, 387 pages. \$43.95. Provides an overview of criminal law, including punishment, specific crimes, defenses & burden of proof. 1086

## SUBSCRIBE TO PLN FOR 3 YEARS AND CHOOSE ONE BONUS!

1. FOUR (4) FREE ISSUES FOR 40 TOTAL! OR
2. PROTECTING YOUR HEALTH AND SAFETY (A \$10.00 VALUE!)

**Protecting Your Health and Safety**, by Robert E. Toone, Southern Poverty Law Center, 325 pages. \$10.00. This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how to enforce your rights, including through litigation. 1060

**Spanish-English/English-Spanish Dictionary**, 2nd ed. Random House. \$15.95. Spanish-English and English-Spanish. 60,000+ entries from A to Z; includes Western Hemisphere usage. 1034a

**Writing to Win: The Legal Writer**, by Steven D. Stark, Broadway Books/Random House, 283 pages. \$19.95. Explains the writing of effective complaints, responses, briefs, motions and other legal papers. 1035

**Actual Innocence: When Justice Goes Wrong and How to Make it Right**, updated paperback ed., by Barry Scheck, Peter Neufeld and Jim Dwyer, 403 pages. \$16.00. Describes how criminal defendants are wrongly convicted. Explains DNA testing and how it works to free the innocent. Devastating critique of police and prosecutorial misconduct. 1030

**Webster's English Dictionary**, Newly revised and updated, Random House. \$8.95. 75,000+ entries. Includes tips on writing and word usage, and has updated geographical and biographical entries. Includes recent business and computer terms. 1033

**Everyday Letters for Busy People**, by Debra Hart May, 287 pages. \$18.99. Hundreds of sample letters that can be adapted for most any purpose, including letters to government agencies and officials. Has numerous tips for writing effective letters. 1048

**Roget's Thesaurus**, 717 pages. \$8.95. Helps you find the right word for what you want to say. 11,000 words listed alphabetically with over 200,000 synonyms and antonyms. Sample sentences and parts of speech shown for every main word. Covers all levels of vocabulary and identifies informal and slang words. 1045

**Beyond Bars, Rejoining Society After Prison**, by Jeffrey Ian Ross, Ph.D. and Stephen C. Richards, Ph.D., Alpha, 240 pages. \$14.95. *Beyond Bars* is a practical and comprehensive guide for ex-convicts and their families for managing successful re-entry into the community, and includes information about budgets, job searches, family issues, preparing for release while still incarcerated, and more. 1080

**Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A.**, by Mumia Abu Jamal, City Lights Publishers, 280 pages. \$16.95. In *Jailhouse Lawyers*, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned-advocates who have learned to use the court system to represent other prisoners. 1073

**With Liberty for Some: 500 Years of Imprisonment in America**, by Scott Christianson, Northeastern University Press, 372 pages. \$18.95. The best overall history of the U.S. prison system from 1492 through the 20th century. A must-read for understanding how little things have changed in U.S. prisons over hundreds of years. 1026

**Complete GED Preparation**, by Steck-Vaughn, 922 pages. \$24.99. This useful handbook contains over 2,000 GED-style questions to thoroughly prepare students for taking the GED test. It offers complete coverage of the revised GED test with new testing information, instructions and a practice test. 1099

**\* ALL BOOKS SOLD BY PLN ARE SOFTCOVER / PAPERBACK \***

**Hepatitis and Liver Disease: What You Need to Know**, by Melissa Palmer, MD, 457 pages. **\$17.95.** Describes symptoms & treatments of hepatitis B & C and other liver diseases. Includes medications to avoid, what diet to follow and exercises to perform, plus a bibliography. 1031

**Arrested: What to Do When Your Loved One's in Jail**, by Wes Denham, 240 pages. **\$16.95.** Whether a defendant is charged with misdemeanor disorderly conduct or first-degree murder, this is an indispensable guide for those who want to support family members, partners or friends facing criminal charges. 1084

**Prisoners' Self-Help Litigation Manual**, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 960 pages. **\$39.95.** The premiere, must-have "Bible" of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Highly recommended! 1077

**How to Win Your Personal Injury Claim**, by Atty. Joseph Matthews, 7th edition, NOLO Press, 304 pages. **\$34.99.** While not specifically for prison-related personal injury cases, this book provides comprehensive information on how to handle personal injury and property damage claims arising from accidents. 1075

**Sue the Doctor and Win! Victim's Guide to Secrets of Malpractice Lawsuits**, by Lewis Laska, 336 pages. **\$39.95.** Written for victims of medical malpractice/neglect, to prepare for litigation. Note that this book addresses medical malpractice claims and issues in general, not specifically related to prisoners. 1079

**Advanced Criminal Procedure in a Nutshell**, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **\$43.95.** This text is designed for supplemental reading in an advanced criminal procedure course on the post-investigation processing of a criminal case, including prosecution and adjudication. 1090

**Our Bodies, Ourselves**, by The Boston Women's Health Book Collective, 944 pages. **\$26.00.** This book about women's health and sexuality has been called "America's best-selling book on all aspects of women's health," and is a great resource for women of all ages. 1082

**Arrest-Proof Yourself**, by Dale Carson and Wes Denham, 288 pages. **\$14.95.** This essential "how not to" guide written by an ex-cop explains how to act and what to say when confronted by the police to minimize the chances of being arrested and avoid additional charges. Includes information on basic tricks that police use to get people to incriminate themselves. 1083

**Nolo's Plain-English Law Dictionary**, by Gerald N. Hill and Kathleen T. Hill, 496 pages. **\$29.99.** Find terms you can use to understand and access the law. Contains 3,800 easy-to-read definitions for common (and not so common) legal terms. 3001

**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFave, 7th edition, 603 pages. **\$43.95.** Intended for use by law students, this is a succinct analysis of constitutional standards of major significance in the area of criminal procedure. 1085

**A Dictionary of Criminal Law Terms** (Black's Law Dictionary® Series), by Bryan A. Garner, 768 pages. **\$33.95.** This handbook contains police terms such as preventive detention and protective sweep, and phrases from judicial-created law such as independent-source rule and open-fields doctrine. A good resource to help navigate your way through the maze of legal language in criminal cases. 1088

**PLN Cumulative Index.** **\$22.50 each.** PLN Article Indexes provide detailed information about all PLN articles, including title, author, issue, page number, topics covered, citations, and if it is state, BOP or jail specific. Can be searched on over 500 subjects such as medical neglect or sexual assault. Circle the index(es) you are ordering: **1990-1995, 1996-1998, 1999-2001, 2002-2004** (more recent indexes not yet available)

#### Subscription Rates

	1 year	2 years	3 years	4 years
<b>Prisoners</b>	<b>\$30</b>	<b>\$ 60</b>	<b>\$ 90</b>	<b>\$120</b>
<b>Individuals</b>	<b>\$35</b>	<b>\$ 70</b>	<b>\$105</b>	<b>\$140</b>
<b>Professionals</b>	<b>\$90</b>	<b>\$180</b>	<b>\$270</b>	<b>\$360</b>

(Attorneys, agencies, libraries)

#### Subscription Bonuses

- 2 years** - 2 bonus issues for 26 total issues  
**3 years** - 4 bonus issues (40 total) or a bonus book as listed on pg. 61  
**4 years** - 6 bonus issues (54 total) or a bonus book as listed on pg. 61

(All subscription rates and bonus offers are valid as of 4-1-2014)



Purchase with Visa, MasterCard, AmEx or Discover by phone: **561-360-2523**

Or buy books and subscriptions online: **www.prisonlegalnews.org**



#### Mail Payment and Order to:

Prison Legal News  
P.O. Box 1151  
Lake Worth, FL 33460

All purchases must be pre-paid. Prisoners can pay with new first-class stamps (strips or books only, no single stamps) or pre-stamped envelopes, if allowed by institutional policies.

Please Change my Address to what is entered below ☐

#### Mail Order To:

Name: \_\_\_\_\_  
 DOC #: \_\_\_\_\_  
 Suite/Cell: \_\_\_\_\_  
 Agency/Inst: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_

#### Subscribe to Prison Legal News

\$ Amount

- 6 month subscription (prisoners only) - \$18 \_\_\_\_\_  
 1 yr subscription (12 issues) \_\_\_\_\_  
 2 yr subscription (2 bonus issues for 26 total!) \_\_\_\_\_  
 3 yr sub (write below which FREE book you want) \_\_\_\_\_  
     or 4 bonus issues for 40 issues total! \_\_\_\_\_  
 4 yr sub (write below which FREE book you want) \_\_\_\_\_  
     or 6 bonus issues for 54 issues total! \_\_\_\_\_  
 Single back issue or sample copy of PLN - \$5.00 each \_\_\_\_\_

#### Books or Index Orders

(No S/H charge on 3 & 4-year sub free books OR book orders OVER \$50!) Qty.

\_\_\_\_\_  \_\_\_\_\_  
 \_\_\_\_\_  \_\_\_\_\_  
 \_\_\_\_\_  \_\_\_\_\_  
 \_\_\_\_\_  \_\_\_\_\_  
 Add **\$6.00 S/H to BOOK ORDERS UNDER \$50** \_\_\_\_\_  
 (PLN subs do not count towards \$50 for free S/H for book orders)  
 FL residents ONLY add 6% to Total Book Cost \_\_\_\_\_  
**Total Amount Enclosed:** \_\_\_\_\_

\* **NO REFUNDS on PLN subscription or book / index orders after orders have been placed. \***

\* **We are not responsible for incorrect addresses or address changes after orders have been placed. \***



## Great Self-Help Book Deals From Prison Legal News!



**Order from Prison Legal News**  
Add \$6 shipping for orders under \$50

**Prison Legal News**  
PO Box 1151  
Lake Worth, FL 33460  
Phone: 561-360-2523  
[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

### How to Win Your Personal Injury Claim

\$34.99

*How to Win Your Personal Injury Claim* shows you how to handle almost every accident situation, and guides you through the insurance claim process, step by step. Learn how to:

- protect your rights after an accident
- determine what your claim is worth
- handle a property-damage claim
- deal with uncooperative doctors, lawyers and insurance companies
- counter the special tactics insurance companies use
- prepare a claim for compensation
- negotiate a full and fair settlement
- stay on top of your case if you hire a lawyer



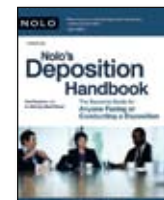
The Criminal Law Handbook  
\$39.99



Represent Yourself in Court  
\$39.99



Legal Research  
\$49.99



Nolo's Deposition Handbook  
\$34.99

**NOLO**  
YOUR LEGAL COMPANION



# PRISONLEGALNEWS.org

**Dedicated to Protecting Human Rights**

>>FREE Data Search |

Decisions

Investigations

Audits

Publications

Cases

Verdicts

Settlements

**If you need to know about prisons and jails or are litigating a detention facility case, you can't afford not to subscribe to our website!**

**Online subscribers get unlimited, 24-hour a day access to the website and its content!**

**Sign up for PLN's FREE listserv to receive prison and jail news and court rulings by e-mail.**

- ▶ PLN's website offers all issues of PLN in both searchable database and PDF formats. Issues are indexed and posted as soon as they go to press.
- ▶ Publications section has numerous downloadable government reports, audits and investigations from around the country.
- ▶ Full text decisions of thousands of court cases, published and unpublished.
- ▶ All content is easy to print for downloading and mailing to prisoners.
- ▶ Most complete collection of prison and jail related verdicts and settlements anywhere.
- ▶ Order books, print subscriptions and make donations on line.

- ▶ Brief bank with a wide assortment of winning motions, briefs, complaints and settlements.
- ▶ Links to thousands of prison, jail, criminal justice and legal websites around the world.
- ▶ Thousands of articles and cases, all fully indexed by more than 500 subjects, searchable by case name, case year, state of origin, court, author, location, case outcome, PLN issue and key word search.
- ▶ Search free, pay only if you find it!
- ▶ The highest quality, most comprehensive prison litigation news and research site in the world.

**Affordable rates to meet your budget  
\$19.95 per month • \$149.95 per year**

**Subscribe to Prison Legal News Online! <http://www.prisonlegalnews.org>**



## Prison Legal News

PO Box 1151  
Lake Worth FL 33460

Change Service Requested

Non-Profit Org.  
U.S. Postage  
PAID  
Portland OR  
Permit No. 3142

### Subscription Renewal

Subscriptions expire after the issue shown on the label is mailed. For example, if the label says: EXPIRES 02/2015, then the subscription expires after the February 2015 issue is mailed. Please renew at least 2 months before the expiration date. IF THE LABEL SAYS **EXPIRES: 08/2014** THIS IS YOUR LAST ISSUE. Please renew immediately to avoid missing any issues.

### Change of Address

If you move or are transferred, please notify PLN as soon as possible so your issues can be mailed to your new address! PLN only accepts responsibility for sending an issue to the address provided at the time an issue is mailed!

# FREE Pen Pals

## 50 Verified Web Sites

**YOU CAN POST ON FOR FREE**

**30 PEN PAL CLUBS - ALL FREE**

All Resources  
are Freshly  
Verified &  
Up-to-Date

**FREE Bonus:** purchase our new pen pal catalog and we will post your pen pal ad on any 3 free websites - FREE



And send you a printout of your 3 ads as proof

**SATISFACTION GUARENTEED OR  
YOUR MONEY BACK**

NO GUARANTEE PEOPLE WILL WRITE YOU.

We offer you the best selection of free pen pal websites in America & overseas. All freshly verified.

This is NOT an Inmate Shopper Catalog. It's a NEW SEPERATE Pen Pal Catalog

**Get the best pen pal catalog in America and posted on 3 pen pal websites Only \$24.98 FREE s/h**

**Offer NOT  
Available in  
Florida**

**ASK HOW TO GET A LIST OF 400 PEN PALS FOR \$15.98**

Rush \$24.98 to INMATE SHOPPER, Box 4311,  
Mission, TX 78574 (post on more than 3 sites for a small fee)

# 400 PEN PALS

**NO JOKE - NOT A SCAM**

Direct from InmateShopper.com

**400 Pen Pal addresses \$15.98**

**15% with Photos. 50% American**

**50% Overseas**

**No two lists are the same**

**RUSH \$15.98 To:**

**Inmate Shopper, Box 4311**

**Mission, TX 78574 INFO/SASE**

**ASK ABOUT OUR 28,000 RUSSIAN GIRLS**



## Modern-Day Slavery in America's Prison Workforce

*Why can't we embrace the idea that prisoners have labor rights?*

*by Beth Schwartzapfel*

**L**AURIE HAZEN HAS BAD TASTE IN MEN. "They're my downfall," the 41-year-old jokes in her Massachusetts accent. "I have to really stay single." An ex-boyfriend first introduced her to prescription drugs, she says, a habit she maintained through the course of another relationship, with another addict, and through two stints in prison, most recently in 2012 for writing fake prescriptions.

When she arrived at the Massachusetts Correctional Institution in Framingham, Hazen left behind a job as a records manager for a fiber-optics company. Her \$14-an-hour salary had covered food, utilities and rent on the modest apartment she shared with her boyfriend and her teenage

son. She would have been putting some money away, too, if her paycheck hadn't also been covering the couple's drug habit. As it was, like many prisoners, she went to prison with no savings and, because her boyfriend was locked up too, had no one on the outside to send her money. Her son went to live with his dad.

After two weeks in prison, Hazen could apply for a job. Because her sentence was less than a year, she wasn't eligible for the prison's highest-paying job at \$20 per week – stitching American flags for the state police – and she had to choose between washing dishes in the kitchen and cleaning bathrooms. Because portions in prison are notoriously small, Hazen took the kitchen job so she could eat a little extra before and after her shifts. She earned \$2 a day collecting dirty trays and loading them into the dishwasher during breakfast, lunch and dinner. The cramped room where she worked had no windows and routinely filled with steam from the 200-degree dishwasher. There was one tiny fan. "It was pretty much slave labor," she says, "but there was nothing I could do about that. I needed stamps to write to my child. I needed hygiene products."

About half of the 1.6 million Americans serving time in state and federal prisons have full-time jobs like Hazen did. They aren't counted in standard labor surveys, but prisoners make up a sizable workforce: with 870,000 working prisoners, roughly the same number of workers as in the states of Vermont and Rhode Island combined. Despite decades' worth of talk about reform – of giving prisoners the skills and resources they need to build a life after prison – the vast majority of these work-

ers, almost 700,000, still do "institutional maintenance" work like Hazen's. They mop cellblock floors, prepare and serve food in the dining hall, mow the lawns, file papers in the warden's office, and launder millions of tons of uniforms and bed linens. Compensation varies from state to state and facility to facility, but the median wage in state and federal prisons is 20 and 31 cents an hour, respectively.

Because prisoner workers are not considered "employees" under the law, they have none of the protections that word implies. No disability or worker's compensation in the event of an injury. No Social Security withholdings, sick time or overtime pay. In three states – Texas, Georgia and Arkansas – they work for free. In Texas, where prisoners are required to work under threat of punishment, most do maintenance tasks like Hazen, but some are assigned to "field force" jobs designed to be particularly demeaning. "It wouldn't be an ideal job," says Jason Clark, Texas Department of Criminal Justice public information office director. "Someone may have had disciplinary issues, so they end up in the field force, doing various things including clearing fence lines. They're out under armed-guard supervision, using their labor."

If that scenario sounds familiar, it should. "Thousands of prisoners toil in the hot sun every day and make nothing," says Judith Greene, a researcher and advocate with the nonprofit group Justice Strategies. "Prison guards on horseback, ten-gallon hats, prisoners in their uniforms. It looks like what it is: plantation labor all over again."

Critics trace the current system back to convict-leasing, which historian Douglas

### INSIDE

From the Editor	12
Companies Contract with DAs	14
CCA Treats Employees Poorly	18
Sex Offender Residency Laws	20
Georgia Courts now Open to Public	22
Snitching in U.S. Justice System	24
Attica Riot Records Unsealed	28
Report on HIV in Prisons	31
PLRA Fee Cap Constitutional	42
Child Porn Restitution Cases	46
Wal-Mart and Prison Labor	48
Recidivism Performance Measures	50
News in Brief	56

## **DON'T LET THE TIME DO YOU. STAY CONNECTED!**

**Guaranteed savings of up to 90%** on your long distance, out-of-state, and international calls from Federal prisons, county jails and State prisons.

### **Best Rates and Plans**

Multi-number Friends & Family Package for as little as \$10.00/month

More plans & more numbers than any operator -

### **No Hidden Fees**

**What We Say Is What You Pay** – NO additional “fees”, “charges” or “surcharges”

International calls are billed only on call acceptance. No bogus rounding

### **No Contracts, No Penalties, No Hassles**

No long term commitments – Service is always month – to – month. Cancel at anytime with NO penalties and NO cancellation fees with just a phone call or an e-mail.

### **Fast and EZ Setup**

We **ALWAYS** have numbers and can set up instantaneously online or on the phone.

## **Special Commitment, Civil Detention & Halfway House**

\$0.40 connection charge from payphones  
lowest in the business

Voice Mail and Call Recording options

Call, write, e-mail or have your loved ones check out our website for more information.

SP Telecom  
1220 Broadway - # 801-A  
New York, NY 10001  
[www.inmatefone.com](http://www.inmatefone.com)  
e-mail: [clients@inmatefone.com](mailto:clients@inmatefone.com)  
Español: [soporte@inmatefone.com](mailto:soporte@inmatefone.com)  
Call: 1(845)326-5300 (Collect calls are NOT accepted)  
Español: 1(845)342-8110 (Llamadas por cobrar no se aceptan)

Some restrictions apply. Plan availability depends on the Institution

## **NO PERMITA QUE EL TIEMPO LE SEPARA DE SU FAMILIA!**

**Garantizamos ahorros de hasta el 90%** en sus llamadas de larga distancia, entre estados, y en las llamadas internacionales desde prisiones federales, estatales y locales.

### **Los mejores Planes y Tarifas**

Plan para familias y amigos con varios numeros por tan solo \$10.00/ mes .

Mas planes y numeros que ningun otro operador .

### **No hay letra pequeña**

**Lo Que Ves Es Lo Que Pagas**, NO hay ningun otro cargo extra.

Las llamadas internacionales solo se facturan cuando es aceptada por el familiar al otro lado del hilo telefonico.

**No hay contrato , permanencia ni ningun tipo de travas .**

El servicio siempre se ofrece en base a un mes de duracion pudiendo renovar el mismo todo los meses sin ningun cargo por la terminacion del servicio y lo puede solicitar con una simple llamada de telefono o con un correo electronico (E-MAIL)

**La solicitud se puede hacer rapida y muy facil .**

Nosotros siempre tenemos numeros y podemos procesar to registro inmediatamente en lines o por telefono.

**Detenidos civiles en carceles especiales y reclusos en camino a casas de medio camino le ofrecemos los siguientes servicios.**

\$0.40 de recargo desde telefonos de prepago, la tarifa mas baja en el sector .

Buzon de Voz y la posibilidad de grabar las llamadas .





## Prison Legal News

*a publication of the  
Human Rights Defense Center*  
[www.humanrightsdefensecenter.org](http://www.humanrightsdefensecenter.org)

### EDITOR

Paul Wright

### MANAGING EDITOR

Alex Friedmann

### COLUMNISTS

Michael Cohen, Kent Russell,  
Mumia Abu Jamal

### CONTRIBUTING WRITERS

Matthew Clarke, John Dannenberg,  
Derek Gilna, Gary Hunter,  
David Reutter, Mark Wilson,  
Joe Watson, Christopher Zoukis

### RESEARCH ASSOCIATE

Mari Garcia

### ADVERTISING DIRECTOR

Susan Schwartzkopf

### LAYOUT

Lansing Scott

### HRDC LITIGATION PROJECT

Lance Weber—General Counsel  
Sabarish Neelakanta—Staff Attorney

### PLN is a monthly publication.

A one year subscription is \$30 for prisoners, \$35 for individuals, and \$90 for lawyers and institutions. Prisoner donations of less than \$30 will be pro-rated at \$3.00/issue. Do not send less than \$18.00 at a time. All foreign subscriptions are \$100 sent via airmail. PLN accepts Visa and Mastercard orders by phone. New subscribers please allow four to six weeks for the delivery of your first issue. Confirmation of receipt of donations cannot be made without an SASE. PLN is a section 501 (c)(3) non-profit organization. Donations are tax deductible. Send contributions to:

**Prison Legal News**

**PO Box 1151**

**Lake Worth, FL 33460**

**561-360-2523**

**[info@prisonlegalnews.org](mailto:info@prisonlegalnews.org)**

**[www.prisonlegalnews.org](http://www.prisonlegalnews.org)**

PLN reports on legal cases and news stories related to prisoner rights and prison conditions of confinement. PLN welcomes all news clippings, legal summaries and leads on people to contact related to those issues.

Article submissions should be sent to - The Editor - at the above address. We cannot return submissions without an SASE. Check our website or send an SASE for writer guidelines.

Advertising offers are void where prohibited by law and constitutional detention facility rules.

PLN is indexed by the *Alternative Press Index*, *Criminal Justice Periodicals Index* and the *Department of Justice Index*.

## Modern Slavery in Prisons (cont.)

Blackmon calls “slavery by another name.” From the time of Reconstruction until the early to mid-20th century, prisoners – almost all of them black, many convicted of fabricated crimes like “false pretense” or “selling cotton after sunset” – were routinely leased out to private companies to work on plantations and in coal mines and factories. There, they “were compelled to labor without compensation, were repeatedly bought and sold, and were forced to do the bidding of white masters through the regular application of extraordinary physical coercion,” as Blackmon writes.

Conditions in most prison workplaces today are nowhere near as brutal, but the legacy is hard to ignore. Since prisoners are so far removed from the free market, and since their work is barely recognized as such by government agencies that regulate labor, they have little recourse and few protections. The Occupational Safety and Health Administration is one safeguard they do have – federal and some state prisoners “working in conditions similar to those outside prisons” can file an OSHA complaint if their workplace is unsafe – but it’s toothless because, unlike in a free-world workplace, OSHA has to notify prisons in advance of inspections. A 2010 report by the federal Government Accountability Office (GAO) skewered the federal prison system for purposefully hiding from OSHA dangerous practices at an electronics-waste recycling plant where toxic dust sickened hundreds of prisoner workers and officers.

Despite the conditions and the pay, most prisoners want to work. A job gives them a safe place to be for hours each day, provides a break from the monotony of prison life, and – in most states – puts a few dollars and cents in their commissary account. “I was happy to work,” Hazen says. “It made me feel like I wasn’t so much in prison. It gave me a minute by myself to get away from the craziness, time to think and reflect and figure out what I wanted to do with my life.” What the job didn’t provide was a wage sufficient to support her son and accumulate some savings for post-prison life, or job training that would help her pursue the goals she established in that dish room: to study psychology and one day open a domestic violence shelter. After six months of work, Hazen left prison the way

most people do: with a criminal record, no meaningful job experience beyond what she went in with and not even enough savings to buy a suit for a job interview (\$43).

Study after study has found what common sense would suggest: Prisoners who gain professional skills while locked up, and those who earn a decent wage for their work, are far less likely to end up back behind bars. But if prisons in America, with the world’s highest incarceration rate, had to pay minimum wage – let alone the prevailing wage – they couldn’t keep operating. If prisoners like Hazen weren’t washing dishes in Massachusetts prisons, the state’s corrections department would spend an average of \$9.22 to hire someone else to do it (the mean hourly wage for a dishwasher, according to the Bureau of Labor Statistics). That’s 30 to 45 times what prisoners make for performing the same service. As a result, prisons – and taxpayers – use prisoners to save hundreds of millions of dollars each year on labor costs, according to the GAO.

“If our criminal justice system had to pay a fair wage for labor that inmates provide, it would collapse,” says Alex Friedmann, managing editor of *Prison Legal News*. “We could not afford to run our justice system without exploiting inmates.”

If paying prisoners pennies looks like savings to corrections officials, it translates to additional costs for everyone else. Consider, for starters, that more than 1.2 million prisoners have minor children – 2.7 million kids in all. About half of these parents were, like Laurie Hazen, their families’ primary breadwinners before they went to prison. Not surprisingly, their families often turn to social safety-net programs to compensate for the missing income. Families with an incarcerated parent are 50 percent more likely to use Medicaid and twice as likely to use food stamps.

For most, the situation doesn’t improve upon release. Even as state and federal governments pour hundreds of millions of dollars into re-entry initiatives with the aim of easing the transition home and slowing the “revolving door” between prison and the community, they’re undermining successful re-entry by burying prisoners in fees and fines while paying them next to nothing for their work. It costs money to be locked up in America – more and more of it all the time: court costs and fees when you’re tried, booking fees when you’re processed

## Modern Slavery in Prisons (cont.)

in jail and then prison, and supervision fees while you're out on parole. Restitution costs, child support arrears and, in some states, "room and board costs" pile up during long prison terms. A state-sponsored study of the impact of legal fees in Washington found that the average prisoner owes \$2,540 per conviction in fees and fines.

Once a prisoner is released, debt compounds another financial problem: a felony conviction makes job hunting notoriously difficult. That's especially true if you're black, which almost 40 percent of prisoners are. In a seminal 2003 study, only 5 percent of black applicants to entry-level jobs got callbacks if they had a criminal record, one-third as many as black applicants without a record. (Whites *with* a criminal record were still more likely to be called back than blacks without one).

The combination of debt and poor job opportunities can lead recently-released prisoners right back to prison – neither a cost-effective outcome for the state nor a

desirable outcome for, well, anyone. Sometimes people land back behind bars because of their debts alone; the American Civil Liberties Union and New York University's Brennan Center for Justice documented hundreds of cases in which people were reincarcerated as a result of their inability to pay criminal justice debts. In one Ohio county, more than 20 percent of all jail bookings stem from a failure to pay fines – a Dickensian situation that critics liken to modern-day debtors' prisons.

Harvard sociologist Bruce Western is currently conducting a small study on re-entry, following 135 people in Boston's urban neighborhoods during the first year after they're released from Massachusetts prisons. More than half of the people in his sample have not worked a single day in the months since they've been released. They survive instead on \$200 a month in food stamps. If they have no friends or family to stay with, they are homeless. "How do you live on zero income?" Western asks. "People appear to be doing that."

For many ex-felons, the only way to dig out of debt is to break the law. New Yorker Glenn Martin was 22 in 1995 when he was sentenced to six years for armed robbery of a jewelry store. In prison, he earned \$10.50 for 30 hours of work a week as an administrator at the facility's college program – approximately the same pay as Laurie Hazen earned washing dishes, but with the benefit of providing real job experience. "I learned how to use computers. I kept spreadsheets, helped people register for classes," he says.

He was released in 2000 and took the bus back to Manhattan with just \$230 in his pocket. Then he got a break: A non-profit specializing in job placements for

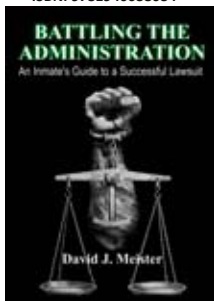
people with criminal records helped him land a job as a receptionist at a law firm. It paid \$16,000 a year – a far cry from the thousands per day Martin says he used to make "ripping and running the street." But, he says, "I was committed to turning my life around."

His meager pay plus the debts he'd racked up in prison made that practically impossible. When Martin had gone in his son was six months old, and Martin was paying \$50 a month in child support, an amount he naively thought would remain fixed during his bid, making paying it off "doable." But later he learned that the judge had issued a default order, increasing his payments to \$100 per week plus 9 percent interest. Now he owed \$53,000 in arrears, plus the ongoing weekly payments, plus \$5,000 in court fees and fines. "It's insurmountable pressure," he says. "Either I do something wrong to pay off the fines and fees, or I relegate myself to a debtors' prison or a lifetime of poverty."

Locking Martin up for six years cost New York taxpayers approximately \$360,000. The most cost-effective outcome would be for him to live a lawful life and not be incarcerated again. Yet Martin felt cornered. "I committed crimes," he says matter-of-factly. "The statute of limitations are over, so I think I can say it out loud: I broke the law." Martin says he brought in about \$30,000 selling counterfeit designer handbags on eBay – enough to help pay off his debts as he continued to build what has become a successful career. Until recently, Martin oversaw a \$1 million budget as public policy director of the Fortune Society, a service and advocacy group for former prisoners. (He left in March 2014 to found his own prison reform group, JustLeadershipUSA).

### BATTLING THE ADMINISTRATION An Inmate's Guide to a Successful Lawsuit

by David J. Meister  
ISBN: 9781940638034



1<sup>st</sup> Edition 2013-2014  
\$34.95 includes shipping

Send Check or money order to:  
**Wynword Press**  
P.O. Box 557  
Bonners Ferry, ID 83805

\*Guidance on how to get organized  
\*Sample complaint & other forms  
\*Covers court rules, evidence and exhibits  
\*Citations to controlling case law  
\*Summary of prisoner's rights  
\*Details on hearing and trial practice, ...and more!

Tel: 208-267-0817

Order online at:  
[www.wynwordpress.com](http://www.wynwordpress.com)

## EXECUTIVE CLEMENCY

For Info. On Sentence Reduction through  
Executive Clemency:

### NATIONAL CLEMENCY PROJECT

3907 N. Federal Highway, # 151

Pompano Beach, FL 33064

954-271-2304

[nationalclemencyprojectinc.com](http://nationalclemencyprojectinc.com)

(35-Years of Clemency & Parole Assistance)  
(Transfers Under The Int'l Prisoner Treaty)



### Post conviction State and Federal Habeas Corpus petitions

### FOR VIRGINIA ONLY

Full review of case:

**\$2995.00**

Write to:  
Dale Jensen, Criminal Law  
Attorney  
606 Bull Run  
Staunton, VA 24401



or have someone call or go to:  
(540) 324 - 8828  
[djensencrimlaw@gmail.com](mailto:djensencrimlaw@gmail.com)  
[www.djensencrimlaw.com](http://www.djensencrimlaw.com)

"The system creates this weird situation where it tells you to do the right thing and turn your life around," Martin says, "and then actually incentivizes future violations of the law – even if you're inspired to do the right thing."

Lately everyone from Attorney General Eric Holder to Senator Ted Cruz has called for reforms to just about every aspect of the system: how we target people for arrest, how we arrest them, how we try them, sentence them, incarcerate them, release them, and supervise and support them once they're home. All are areas ripe for reimagining. But prison labor is not.

In 1985, as "tough on crime" mania was sweeping the country, Supreme Court Chief Justice Warren Burger wrote presciently: "When our country is embarked upon a multibillion dollar prison construction program, it is fair to ask: Are we going to build more expensive human 'warehouses,' or should we change our thinking and move towards factories with fences around them, where inmates can acquire education and vocational training and then produce marketable goods?" History has answered Burger: warehouses. But it doesn't have to

be that way. What would happen if Americans decided to treat prison workers like, well, workers?

It's a noisy Wednesday at the Brown Creek metals plant in Polkton, North Carolina. The plant's approximately 55 workers make fire rings for state parks, industrial sinks for school cafeterias, contraband lockers for the police. Some are experts in CAD, computer-aided design. Others are journeyman welders. A 44-year-old man named Joshua\* built the plant's plasma burn table from a pile of mail-order parts. Before he went to prison for sexual assault in 1999, Joshua made \$15 an hour as a machinist making automobile cylinders; now he makes \$15 a week operating the plasma cutter, designing and creating custom metal piecework. During his downtime at work, he uses leftover scrap metal to design and build grandfather clocks that keep remarkably accurate time. One sits next to his workstation, pendulum swinging, marking his time in custody: 15 years down, 8 to go.

This plant and 31 others like it compose the North Carolina Correction Enterprises program, which puts prisoners to work

producing goods for sale to "tax-supported entities" like municipal or county governments. Every state, along with the Federal Bureau of Prisons, runs a similar program in which prisoners learn skilled work that can ease their transition to the outside. Modern-day correctional industries date back to the 1930s, when Franklin Delano Roosevelt won the support of a reluctant American Federation of Labor to create Federal Prison Industries, with the dual aim of rehabilitating prisoners and easing the burden on the taxpayer. "If we send men to prison, and don't let them work, the taxpayer must foot the entire bill," the Federal Prison Bureau director told *The New York Times*. FPI – now more commonly known as UNICOR – sells products exclusively to the federal government, with the aim of minimizing competition with private-sector companies. State correctional industries follow similar rules.

A hybrid between a for-profit business and a rehabilitation program, correctional industries are typically self-supporting: Program revenue, not taxpayers, pays for equipment, supplies, prisoner wages and staff salaries, and profit is rolled back into

**ColdCrib**  
#1 JAILHOUSE CATALOG  
ISSUE#3 OUT NOW!  
3 FREE Non-Nude PHOTOS INCLUDED!  
WITH PURCHASE  
INMATES MUST SEND \$10  
TO GET YOUR OWN MULTI-PAGE  
CATALOG/MAGAZINE TO ORDER  
HUNDREDS OF LOVELY LADIES PHOTOS  
& OTHER SERVICES FOR THE INCARCERATED

ONLY \$10  
THE TRUTH ABOUT SAVING ON JAIL CALLS  
LEARN HOW TO GET FEMALE COMPANIONS ON THE OUTSIDE  
"CORRECTIONAL FACILITY FRIENDLY"

GET MAIL FROM FEMALE PENPALS  
GET LISTED ON OUR PENPAL SITE  
www.COLDCRIB.com  
Send your photo and info along  
with \$30 for 1 FULL year membership  
OR \$30 for Pen-Pal List of up to 50 addresses  
of our registered female PenPals

**ColdCrib communications**  
INMATES CALL CELL PHONES  
\$17/mo Unlimited Calls  
+ \$15 ONE TIME Activation Fee  
Federal, State, County & Local Facility Inmates  
Local Number Provided Same Day!

NOW INMATES CAN ORDER THEIR OWN NUMBERS!  
MAKE EVERY CALL HOME A LOCAL CALL  
NO MORE RUNNING OUT OF MINUTES!  
SEND \$3 FOR PHONE PLAN APPLICATION FORM  
OR HAVE YOUR LOVED ONES ORDER ONLINE  
www.ColdCribCommunications.com

SPECIAL OFFER  
BEST 4X6 PHOTOS  
VARIOUS BACKSHOTS & POSITIONS  
SET OF 15 (NON-NUDE) SEXY PHOTOS  
ONLY \$16  
MUST ADD \$2 S/H FOR ALL ORDERS  
INMATES MUST SEND FACILITY CHECK OR MONEY ORDERS  
COLD CRIB  
PO BOX 682407  
FRANKLIN TN 37069

## Help From Outside, For Humanity Inside.

Offering basic services on the outside.

- FINANCE & BUSINESS
- SOCIAL NETWORKING
- PARALEGAL
- ADMINISTRATIVE
- INFORMATION
- PHONE
- CREATIVE

**HFO**  
HELP FROM OUTSIDE

Help From Outside understands what you're going through. We can help you accomplish the things you need to get done but can't.

We offer:

- High standards & ethics
- Timely & professional services
- Personal touch

"HFO has excellent business etiquette and ethics."  
- T. Brown

"I like that you sent a personal letter. HFO is more personable than your competitors."  
- A. Mitchell

**WE'VE MOVED! PLEASE CONTACT US AT OUR NEW ADDRESS:**

For a brochure and application please send a SASE to:  
Help From Outside | 2620 Bellevue Way NE #200 | Bellevue, WA 98004  
206.486.6042 | www.helpfromoutside.com



## Modern Slavery in Prisons (cont.)

the program. But the idea is to train workers, not to compensate them; pay is only slightly higher than for prison-maintenance jobs. Still, even the savings Joshua has wrung from his \$15 a week has made some difference, he says: "I send my kids money orders and buy them books. I've sent them several hundred dollars over the last couple years. I wish I could send them more." But he has no complaints about the work: "I love making useful things. I do take pride in my work. I do like learning. I would wilt and die if forced to do some job such as folding sheets or slopping trays day in, day out for years."

The iconic prison job, making license plates, is typically a correctional industries job. Prisoners also do telemarketing and data entry. They build office furniture, fill eyeglass prescriptions, manufacture cleaning supplies, and produce clothing – including, in North Carolina, their own uniforms and those of the correctional officers keeping watch over them. Prisoners gentle wild horses in Wyoming, raise water buffalo for

mozzarella cheese in Colorado and build motorcycles in Nevada. A men's prison in Chino, California runs a commercial dive school for prisoners, training them to work as commercial divers, underwater welders and heavy-construction riggers – highly specialized jobs that pay upward of \$50,000 per year. Their recidivism rate is less than 7 percent, compared to 64 percent of the state's general prison population.

"When we can see a guy come in here with no marketable job skills – the only job he's probably had is street pharmaceuticals – and he learns a skill and takes that skill out when he's released, that's the most rewarding part for me," says Clayton Wright, the plant manager at Brown Creek. The warm metal makes the shop smell like a toaster oven, and the din is so loud that Wright is shouting. "I've been in my office and got phone calls from past inmates: 'I got a job making 30 bucks an hour. I'm so happy.' I've also gotten calls from employers, who ask, 'Do you have any more like so-and-so? He's one of my best.' We're so proud of that."

Programs like North Carolina's are designed with a certain amount of intentional inefficiency, aiming to employ as many prisoners as possible for as many hours as possible. During downtime at the factory, Wright encourages the men to experiment with the materials and equipment; that's how Joshua came to make grandfather clocks.

"What we want to do is, when they're

released, for them to feel unnatural not to be working," says Mike Herron, who heads up correctional industries in Indiana. "For you and I, if we go a long period of not working, something's wrong. But they have not lived their life that way. We're trying to change that habit to where they need to work, mentally, just as much as you and I do." Herron's program stands out because almost every job – from cabinetmaker to electrician to housekeeper – comes with a Department of Labor apprenticeship, including one through the Library of Congress in which prisoners produce Braille books for state-run schools for the blind. Apprentices leave prison with documented bona fides that help to counterbalance the difficulty they'll face in job hunting. "These guys are felons, so paper helps them get in the door when they get outside," Wright says.

Research bears him out. One Washington state study found that working in correctional industries significantly reduces future crime rates and that the state saves \$6 for every \$1 it spends to launch the programs. In Tennessee, the state's correctional industries program, TRICOR, estimates that taxpayers save \$3.3 million each year by giving 1,500 prisoner-employees a productive way to occupy their time. On the federal level, prisoners who have worked in correctional industries are 35 percent less likely to land back in prison; a decade later, recidivism in this group was still substantially lower.



### Save on Prescription Eyeglasses & Shades

Send for a **FREE** Catalog  
Money Back Guarantee

**Prism Optical, Inc.**  
10954 NW 7th Ave  
Dept: LN0914  
Miami, FL 33168

Inquiries from Friends  
and Family Welcome  
1-800-637-4104  
www.prismoptical.com  
contact@prismoptical.com



### FREE BOOK!

Get *The Habeas Citebook* with purchase of a 4-year subscription to *Prison Legal News*. Offer good for new subscriptions and renewals.

Special limited time only! All sales final and no refunds. Order now for this great deal worth \$49.95.

**Prison Legal News** • PO Box 1151 • Lake Worth, FL 33460  
Tel [561] 360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)



But correctional industries, all told, employ only about 60,000 prisoners – less than 4 percent of America's prison population. Why does a program with proven results remain so marginal? Largely because private-sector companies see prisoners doing work that they do, at a fraction of the labor costs, and cry foul.

The thicket of laws and regulations meant to alleviate that complaint – prohibiting most prisoner-made goods from being sold across state lines or in the open market – limits correctional industries' customers and hampers their growth, but it doesn't address the root problem. "If the government would otherwise be buying its pencils from a private vendor," the fact that they get them from prisoners still means that a private pencil vendor is out of a sale, notes Noah Zatz, a University of California, Los Angeles law professor who studies nontraditional employment.

American Apparel, an Alabama manufacturer of military uniforms (not affiliated with the retailer of the same name), says it had to lay off 225 workers in 2012 when it lost a contract to UNICOR. "We pay employees \$9 [per hour] on average,"

American Apparel's Kurt Wilson told *CNN Money*. "They get full medical insurance, 401(k) plans, and paid vacation. Yet we're competing against a federal program that doesn't pay any of that." Last year Alpine Steel, a Las Vegas company, became the target of competitors' ire when it paid Nevada prisoners minimum wage for work that on the outside would pay \$18 or \$19 per hour. "Competing against prison labor reduces the number of jobs available in our industry and hampers our businesses from expanding," read a petition from competitor XL Steel and a half-dozen other local steel companies.

Alpine Steel was participating in the one prison work program that does pay competitive wages – at least in theory. The Prison Industry Enhancement Certification Program (PIE) was created in 1979, over labor unions' strong objections, after high-profile prison riots convinced politicians and the public that prisoners needed something useful to do. For the first time since convict-lease programs were outlawed, for-profit companies were permitted to set up factories inside prisons with prisoners as employees. In 38 states, prisoners do

mostly factory-style work like packaging products, assembling clothing and building circuit boards. Unlike correctional industries goods, these products can be sold on the open market. To avoid undercutting private-sector wages, companies must pay "prevailing wage" for their particular industry, although in practice this often means minimum wage; then the prison can deduct up to 80 percent of pay for "room and board," victims' compensation and mandatory savings. Still, even with these enormous deductions, PIE jobs are the highest paid in prisons; the top of the pay scale is \$16.95 per hour before deductions, according to the National Correctional Industries Association (NCIA), an industry group charged with auditing PIE programs.

The PIE program accounts for fewer than 5,000 jobs – less than 1 percent of working prisoners. Still, the direct link between corporate profit and prison labor – and, by extension, the potential for profit-driven exploitation – has made it a target for criticism.

Proponents of prisoners' and workers' rights point to a push by the American Legislative Exchange Council, or ALEC,

**msp | LAW**



**Michael Soukup**  
Licensed in Wisconsin and Illinois



**Matthew Pinix\***  
Licensed in Wisconsin

## Appealing a Conviction? Hire an Appellate Attorney.

You wouldn't hire a **heart surgeon** to perform **brain surgery**. Don't hire a **trial attorney** to handle **your appeal**. Hire someone who focuses on **criminal appeals**.

Hire the **Law Office of Matthew S. Pinix**, attorneys with more than 10-years' combined experience handling **criminal appeals** in Wisconsin and Illinois.

---

**Law Office of Matthew S. Pinix, LLC**  
1200 East Capitol Drive, Suite 220  
Milwaukee, Wisconsin 53211  
(414) 963-6164  
[www.pinixlawoffice.com](http://www.pinixlawoffice.com)

» Rated by Super Lawyers®  
» Rated by avvo.com  
» Better Business Bureau accredited



**\$9.95** per month

**\*UNLIMITED JAIL CALLS\***  
**"WE BEAT ALL OUR COMPETITORS"**  
**SWITCH TO US TODAY!!**

- No Contracts
- No Credit Checks
- No Equipment to buy

**LOWER THE CALL RATES FOR:**

- GLOBAL TEL LINK
- SECURUS
- V-CONNECT
- PAYTEL
- ICSOLUTIONS
- VAC
- PLUS MORE



**FEDERAL \* STATE \* COUNTY**  
SAME DAY ACTIVATION - NO PER MINUTE CHARGES ON OUR END. JUST \$9.95 A MONTH!

**GET A LOCAL NUMBER TODAY**  
**888-776-2012**

**www.JailCallsUSA.com**

Online Payments Accepted   

## Modern Slavery in Prisons (cont.)

to “improve and expand federal prison industries” in several states. Known for its “model laws” crafted in partnership between extreme right-wing legislators and powerful corporations, ALEC drafted the 1995 Texas Prison Industries Act, which expanded the program there and has since been replicated around the country.

A loophole in the federal PIE legislation exempts companies from paying prevailing wage when the work is designated as a “service” rather than a “job,” and a recent exposé on the website Truthout identified at least one company exploiting that loophole to dangerous effect: An Arizona firm, Martori Farms, which supplies produce to Wal-Mart, was paying prisoners \$2 an hour for involuntary agricultural work in the desert sun, with inadequate water or sunscreen. [See related article, p. 48].

Labor unions would normally be an obvious advocate for exploited workers like these. But they have traditionally been either openly hostile or uncomfortably silent when it comes to prison labor, since prisoner workers are seen as undercutting wages and competing for work with free-world union members. Neither the AFL-CIO nor the Service Employees International Union has an official position on prison labor. While the AFL-CIO’s deputy policy director Kelly Ross says that “clearly we are in favor of raising standards for prison workers in terms of wages and working conditions,” neither union has organized on behalf of prisoner workers. Union workers in trades and manufacturing, two of prison labor’s primary industries, are already struggling in post-industrial America. Many see prison

workers along with sweatshops in China as a threat to their wages and their jobs.

“Jobs are already under attack because of low-cost imports,” said Ann Hoffman of the textile workers’ union UNITE at a 1997 congressional hearing. “Our workers cannot afford to compete with the wages and the lack of benefits that exist in the prisons.”

UNICOR and proponents of state correctional industries argue, of course, that they’re not stealing jobs or suppressing wages. Lockdowns and other prison-related drags on productivity more than make up for the wage savings, NCIA officials say, and besides, they purposefully do a diverse array of work so as to limit their impact on any one industry. Before launching a new program, corrections programs collaborate with state and local agencies to make sure they’re not displacing existing jobs. “In times of high unemployment like we’ve had the last few years, Correctional Industries is even more careful than in good times of employment,” says Gina Honeycutt, executive director of the NCIA.

And ‘round and ‘round the argument goes. When the *a priori* assumption is that prisoners should not compete for free-world work, the argument is narrow: Opponents say that prisoner labor displaces competitors on the outside, while supporters say it doesn’t.

But the back-and-forth debate elides a larger question: So what if it does? We may all agree that by committing certain crimes, people forfeit their right to be free, at least for a time. Must that also mean they forfeit their right to fair pay for their work? Ultimately, does it serve justice – or benefit the economy – to have so many people released from prison with sizable debts, no job skills and nowhere to turn but to crime or the government safety net?

Those who claim, as many do, that “every job a prisoner has is a job a person in the free world does not have” misunder-

stand how economies function, according to economists who have studied the issue. Think of these jobs not as a one-for-one swap – there’s only one position, and either I have it or you have it – but rather as a spiral. Economists call it a “multiplier effect”: Unemployment begets unemployment. Communities with high rates of incarceration don’t just lose the workers who go to prison. They lose the money those workers (and their families) spend at the local grocery, banks, restaurants and shops. The impact is felt through generations; studies show that having a parent in prison hampers a child’s prospect of upward economic mobility. If the law required that prisoners be paid wages comparable to peers doing similar work on the outside – what the PIE program is supposed to do – their jobs would have the opposite effect. When the prisoner sent his income home, he’d help create additional jobs.

Paying prisoners a prevailing wage would eliminate the complaint by free-world competitors and labor unions that prison shops are undercutting wages, since the wages would be the same on the inside and on the outside. It would help prisoners make amends for their crimes, too, by allowing them to pay restitution to victims. And it would help them to accumulate some savings so they can rebuild their lives when they’re released.

But prisons have no incentive to pay prisoners better – to the contrary. Unlike workers in the free market, who (theoretically, anyway) can weigh factors like pay, working conditions and other benefits when deciding where to work, prisoners do not have a choice between employers. If they need the money, or the experience, they must take or leave what the prison is offering. “Prison is a deadening, horrific experience, and people line up for these jobs, whether they’re safe or unsafe, exploitative or not,” says Heather Ann Thompson, a



**FINALLY REAL LADIES/REAL LETTERS!!**  
Genuine, friendly, compassionate  
Writers! **GUARANTEED RESPONSES!**  
\*\*WE'RE WAITING FOR YOUR LETTERS! \*\*  
(this is a service - a fee is involved)  
Send a **SASE \$3.00**  
4 this true exciting news!  
Nubian Princess Ent.  
POB 37  
Timmonsville, SC 29161 18+  
Facebook.com/chanail.paree  
Also XXX DVD's and Erotic Letters -  
Non Inmates Welcome!

Est 1998

## WHEN IT IS YOUR FAMILY'S FUTURE, EXPERIENCE MATTERS

### STATE AND FEDERAL POST-CONVICTION AND APPEALS

Licensed since 1995, hundreds of appellate briefs and habeas petitions, capital qualified for habeas and appeals in Texas and U.S. Southern District of Texas, Motions for New Trial, Rule 35 and 60b motions, re-sentencing and arrest of judgment.

Call or write the Law Offices of Patrick F. McCann, 713-223-3805.

909 Texas Ave, Ste 205, Houston, Texas 77002 • writlawyer@justice.com

**Serious financial inquiries only.**

Temple University historian who studies labor history and criminal justice.

There is one way to change the system fundamentally: Bring prison jobs under the Fair Labor Standards Act (FLSA), which sets minimum standards for wages and working conditions.

Don't count on it happening anytime soon. Prison administrators say that paying real wages for real work would make them go bankrupt. Correctional industries administrators say the same thing: If prisoners received the minimum wage, "we wouldn't exist," says Indiana's Mike Herron. "Security costs and other costs are so high." Even with the rising public and political recognition that America's massive prison system is a costly, counterproductive mess, it's inconceivable that lawmakers – who would be assailed by labor, business *and* tough-on-crime holdouts – will take such a radical step any time in the near future.

Genuine prison labor reform would almost surely have to come through the courts. For decades, prisoners have been asking the judiciary to step in and require that prisons treat their prisoner employees like employees. Countless judges, both state

and federal, have held that prisoner workers need not be offered the same rights or protections as free-world workers. But from one ruling to the next, they can't agree on why, exactly.

Some dismiss the claims on their face, concluding, as the 9th Circuit did in 2010, that "the Thirteenth Amendment does not prohibit involuntary servitude as part of imprisonment for a crime." Other judges have grappled with the nature of the work, for instance whether the work is being done inside the prison or outside, as in work release programs. But as UCLA's Zatz points out, "you can have a call center in a prison that's competitive with other call centers. It's sort of irrelevant, physically where it's located." Some judges zeroed in on who is buying the goods – the distinction between public and private customers that correctional industries officials are so careful to make. "Each of these is a kind of attempt to draw a boundary between the world of the prison and the world of the market," Zatz says. "None of them really makes any sense. But you see courts constantly grasping for these kinds of explanations as a way to separate out inmates from regular workers."

Employment law is supposed to rely on a three-pronged test to determine whether two people are engaged in an employee-employer relationship: Are they producing something of value? Are they getting paid for their work? Do they have a supervisor telling them what to do? Prison jobs meet all three criteria. "The puzzle," Zatz says, "is the way in which courts have a strong instinct: No, there's something different here. And then they run around in circles trying to figure out what that something different is."

The something different is a moral judgment: Prisoner workers are seen as less deserving of a decent job or a competitive wage. The courts, in this sense, are reflecting public sentiment. It's why the idea that "law-abiding citizens ... need jobs worse than inmates" (in the words of one recent Nevada editorial page) resonates the way it does. It's the same reason people with felony convictions have such a hard time finding a job, why in so many states they're barred from voting, why a criminal record can prevent you from living in public housing or securing student loans, and why political candidates have long won more votes with

~ THE SENZA COLLECTION ~

SENZA SPECIALIZES IN PROVIDING YOU SEVERAL CHOICES  
ALL NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY – OR – NON NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY  
WE HAVE DIVIDED OUR CATALOGS INTO THESE CATEGORIES:

**CAUCASIN/AFRICAN-AMERICAN/HISPANIC/ASIAN/MIXED HOTTIES**

EACH PAGE OF OUR CATALOGS HAS 99 GLORIOUSLY SEDUCTIVE LADIES POSING JUST FOR YOUR ENJOYMENT.

OVER 250 CATALOGS TO COLLECT AT JUST \$2.50 PER CATALOG

HERE'S A LITTLE FREEBIE FROM SENZA TO YOU!!!

ORDER YOUR FREE SENZA "99 HOTTIES" SAMPLE CATALOG

JUST SEND US TWO U.S. FOREVER OR FIRST CLASS STAMPS AND A SELF ADDRESSED STAMPED ENVELOPE TO:

**SENZA**  
FREE CATALOG OFFER  
**P.O. BOX 5840**  
**BALTIMORE, MD 21282**

**AND FOR THOSE THAT JUST CANNOT WAIT...TAKE ADVANTAGE OF THIS LIMITED TIME OFFER**

**SENZA'S INTRODUCTORY SPECIAL \*\*\*DIRTY DOZEN\*\*\***

\$19.99 GETS YOU ALL THIS + FREE SHIPPING AND HANDLING

12 EYE POPPING CATALOGS! EACH CATALOG HAS 99 PICS TO CHOOSE FROM ON EACH PAGE

PLUS

12 4X6 PRINTS FROM OUR MIXED HOTTIES SELECTION TO SHOW OFF SENZA'S 4X6'S PRINT QUALITY.

**ALL FOR JUST \$19.99**

**REMEMBER YOU MUST: SPECIFY NUDE OR NON-NUDE ON YOUR ORDER**

**SPECIFY YOUR INSTITUTIONS RESTRICTIONS AS TO THE NUMBER OF PRINTS ALLOWED IN ONE ENVELOPE.**

**SENZA CORPORATE POLICIES – PLEASE REVIEW THEM CAREFULLY**

**ALL SENZA COLLECTION IMAGES ARE SOLD AT A FLAT PRICE OF 0.35 CENTS EACH.**

ANYONE WISHING TO PURCHASE 1000 + PRINTS AT ONE TIME WILL BE GIVEN A FLAT PRICE OF 0.30 CENTS PER IMAGE.

**SENZA HAS A MINIMUM ORDER REQUIREMENT OF: \$15.00 THIS DOESN'T INCLUDE S&H CHARGES.**

**SHIPPING AND HANDLING CHARGES ARE AS FOLLOWS:**

**1 – 5 4x6 PRINTS – \$1.00 PER ENVELOPE / 6 – 15 4x6 PRINTS – \$1.50 PER ENVELOPE / 16 – 25 4x6 PRINTS – \$2.00 PER ENVELOPE**

YOU MUST NOTIFY SENZA ON THE ORDER FORM, THE MAXIMUM NUMBER OF PRINTS YOUR INSTITUTION WILL PERMIT IN EACH ENVELOPE

**SENZA WILL ACCEPT U.S. FIRST CLASS POSTAGE STAMPS AT THE RATE OF \$5.00 FOR EACH BRAND NEW FLAT BOOK OF 20 STAMPS.**

YOU ARE REQUIRED TO KNOW YOUR INSTITUTIONS POLICIES REGARDING WHAT IMAGES ARE ACCEPTABLE INTO YOUR FACILITY INSTITUTION. THERE ARE NO EXCEPTIONS TO THIS POLICY. RETURNED/REJECTED MAIL – YOU WILL HAVE 15 BUSINESS DAYS TO SEND US A SASE WITH A STREET ADDRESS IN WHICH TO MAIL YOUR RETURNED/REJECTED PRINTS.

AFTER 15 DAYS THE PRINTS ARE RETURNED TO OUR INVENTORY.

ALL SALES ARE FINAL/NO REFUNDS OR EXCHANGES

## Modern Slavery in Prisons (cont.)

punitive rhetoric than with compassion or level-headed talk of prevention. In America, breaking the law has become more than just an occasion to be punished or even rehabilitated. It has become a permanent mark of who you are and what our country thinks you're entitled to earn.

For one brief moment, in 1992, prison labor reform looked possible. Since the 1970s, a group of prisoner workers in Arizona and their lawyer, Michael St. George, had pursued a case further and further up the courts, finally convincing the Ninth Circuit Court of Appeals, in *Hale v. Arizona*, that the Fair Labor Standards Act should apply to them. It appeared as though Arizona prisons would have to start paying prisoners minimum wage. The ripple effect would have been enormous: Americans would have been forced not only to rethink their views of prisoners' rights but to reconsider the prison system altogether. The country could not afford to incarcerate 1.6 million people in state and federal prisons if they all had workers' rights.

But it never came to that. The state appealed the decision, the Ninth Circuit reheard the case with 11 judges instead of the original 3-judge panel, and the court overturned its own ruling the following year. Why? When you ask St. George to explain the court's logic, his voice carries decades' worth of weariness: "The Ninth Circuit decided," he says, "that the Fair

Labor Standards Act didn't apply to those inmates, because they were prisoners." ■

*\*"Joshua" is a pseudonym. The North Carolina Department of Corrections requested that prisoners' real names not be used in this story.*

*This article won the June 2014 Sidney Award from the Sidney Hillman Foundation, which honors excellence in journalism in service of the common good. It was originally published by The American Prospect ([www.prospect.org](http://www.prospect.org)) in May 2014 and is reprinted with permission.*

## Texas: Unconstitutional to Revoke Probation Due to Refusal to Self-Incriminate During Polygraph or Therapy

by Matt Clarke

ON MAY 8, 2013, THE TEXAS COURT of Criminal Appeals held that a probationer's term of community supervision cannot be revoked because he had refused to answer incriminating questions while taking a lie detector test or during sex offender group therapy.

Michael Edward Dansby, Sr. received five years on deferred adjudication community supervision (DACS) after he entered into a plea agreement that reduced a charge of aggravated sexual assault to indecency with a child. The DACS conditions required him to complete a sex offender treatment program (SOTP) and submit to polygraph examinations. In the year he was on DACS, Dansby attended over 50 therapy sessions and took two "maintenance" polygraphs designed to ascertain whether he was complying with the requirements of his supervision.

Nine months into his placement on

DACS, Dansby was ordered to submit to a polygraph examination to determine his sexual history. When it became apparent that he would be asked questions about prior, un-adjudicated sexual offenses he might have committed, Dansby informed the polygraph examiner that his "attorney told him not to say anything that might result in prosecution." The examiner, who had already explained that he would not ask for the names of victims or locations of sexual offenses, terminated the examination. Dansby was subsequently involuntarily removed from the SOTP. His DACS was then revoked by the trial court for failure to submit to the polygraph examination and failure to complete the SOTP.

Dansby appealed on the basis that he was being required to forfeit his Fifth Amendment right against self-incrimination to remain on DACS. The Court of Appeals affirmed the trial court, holding



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription! Quarterly drawing WINS \$100! (Void in New York) (Last Quarter's winner from Somers, CT.) TELL YOUR FRIENDS! ACT NOW!!

PO Box 2063 • Fort Walton Beach FL. 32549  
[www.InmateMagazineService.com](http://www.InmateMagazineService.com)

## Inmate Magazine Service





that while that argument might be true of the polygraph examination, it was not true of his failure to complete the SOTP in which, according to the appellate court, self-incrimination was not an issue. Dansby filed a petition for discretionary review with the Texas Court of Criminal Appeals, which was granted.

The Court of Criminal Appeals held the lower appellate court had improperly dodged the constitutional issue. Examining the trial court records, the Court noted that no state official had testified that Dansby would have been involuntarily removed from the SOTP had he not refused to answer the polygraph questions about prior offenses. There were other reasons offered for his removal, but they dealt primarily with his refusal to answer potentially incriminating questions about un-adjudicated prior sexual offenses during therapy sessions.

“[I]n our view, neither the fact that there were other relevant factors contributing to [the] ultimate decision to discharge the appellant, nor the fact that appellant’s reticence in group therapy sessions may not have been wholly attributable to a

reasonable fear of incriminating himself, necessarily establishes that his discharge from the sex offender treatment program occurred independently of his invocation of the Fifth Amendment privilege,” the Court wrote.

Citing *Minnesota v. Murphy*, 465 U.S. 420 (1984), the Court of Criminal Appeals noted that a probationer cannot be required to “choose between making incriminating statements and jeopardizing his conditional liberty by remaining silent.” There is an exception to forced testimony if the probationer is offered immunity from prosecution, but such was not the case here. Therefore, the Court clearly stated that, in Dansby’s case, “Without immunity, he simply may not be forced to confess to criminal behavior, whether during a polygraph examination or during group therapy.”

Having found that Dansby would not have been involuntarily removed from the SOTP had he not refused to answer incriminating questions, the judgment of the Court of Appeals was reversed and the case remanded to that court for further proceedings. See: *Dansby v. State*, 398 S.W.3d 233 (Tex. Crim. App. 2013).

Following remand, on January 22, 2014, the Court of Appeals again affirmed the revocation of Dansby’s placement on DACS, finding that because he had failed to raise Fifth Amendment objections to the conditions of his community supervision – including the sexual history polygraph – before the trial court, he had waived the objections.

Although the Court of Appeals agreed that “the Fifth Amendment gave [Dansby] the right not to answer questions that may provide a link to future prosecution, and the fact that he was on community supervision did not affect this right,” his failure to raise those objections before the trial court, despite being “well-represented by counsel,” resulted in “procedural default” that precluded review of his Fifth Amendment claims on appeal.

Therefore, the revocation of Dansby’s placement on DACS was affirmed. The Court of Criminal Appeals granted Dansby’s second petition for discretionary review on June 11, 2014, which remains pending. See: *Dansby v. State*, 2014 Tex. App. LEXIS 903 (Tex. App. Jan. 22, 2014), *petition for review granted*. ■

## AHRONY, GRAHAM, & ZUCKER, LLP

### A POST-CONVICTION LAW FIRM

**Appeals**

**Habeas Corpus  
Writs (Factual  
Innocence)**

**Parole Hearings**

**SB 260 Hearings**

**MDO Hearings**

**Re-Sentencing**



**Bruce Zucker**

**Orly Ahrony**

**Ian Graham**

**Probation Violations**

**Rap Sheet Correction**

**Prison &  
Parole Issues**

**115 Discipline Issues**

**California & Federal  
Courts**

12400 WILSHIRE BLVD. SUITE 400 • LOS ANGELES, CA 90025

TEL. (310) 979-6400 • WWW.AHRONYGRAHAM.COM

California Cases Only • Unsolicited Original Documents Will Not Be Returned

This is an Advertisement for Legal Services

# From the Editor

by Paul Wright

SINCE ITS INCEPTION, *PRISON LEGAL NEWS* has been reporting on prison slavery and the exploitation of prison slave labor. This month's cover story continues that tradition. As we have repeatedly noted, the 13th Amendment to the U.S. Constitution did not abolish slavery; rather, it limited it to those who have been convicted of a crime – creating what the Virginia Supreme Court

once called “slaves of the state.”

It is important to remember the 60,000 prisoners toiling in prison industry programs for little or no pay, and the less than 5,000 prisoners who perform work for private companies. But even more important are the 2.2 million prisoners who have been removed from the U.S. labor market entirely. If these prisoners were counted as part of the labor market, unemployment rates would be far higher than they are today.

The American fixation on prison slave labor is difficult to understand from a rational perspective, since financially it is a money loser. It does a poor job of fulfilling its stated goal of reducing recidivism, and for a police state that constantly whines about the need for total control, passivity and surveillance of the population, both in prison and out, prison industries are a constant source of weapons which contribute to a steady toll of dead prisoners and staff alike, as well as assaults and escape attempts. Yet prison and government officials defend prison industry programs to the death – just not theirs. Meaningful alternatives, such as offering prisoners real world-type employment that pays at least the federal minimum wage of \$7.25 an hour, and allowing them to keep all of their earned wages, are not even discussed.

The downside of having published *PLN* for over 24 years is that with time many of our friends pass away. On July 24, 2014, Edwin “Eddie” Ellis, 72, died in New York City. Eddie was one of *PLN*'s first subscribers. A Black Panther Party member who was framed for a murder he did not commit and who spent 25 years in prison, he never lost his sense of justice, outrage and humor.

When I met Eddie in the mid-2000s for the first time, he told me that one of the highlights of his incarceration was getting *PLN* in the mail each month. While he was in prison Eddie educated and organized other prisoners. Once he was released he started a non-profit organization called the Center for NuLeadership on Urban Solutions, which advocated for ending mass incarceration and also harnessing the potential of prisoners and ex-prisoners to be part of the solution to American social ills. For many years he hosted *On the Count*, a weekly radio show on WBAI, which was

the only radio show – at least in New York – produced by, for and about prisoners and ex-prisoners.

Eddie was a private person and for a number of years struggled with health issues, which he did not let slow him down. While many will mourn Eddie's passing, and I am one of them, I believe his greatest wish would be not that his death be mourned but that his life be celebrated by continuing the struggle for justice that he spent his life fighting for. Everyone at *PLN* offers our condolences to his friends and family.

As fall approaches we will be sending out our annual fundraiser, and this year we are mailing our annual report to all *PLN* subscribers with our request for donations. The Human Rights Defense Center, *PLN*'s parent organization, does much more than just publish *Prison Legal News*. We advocate for prisoners and their families in the media, the courts, legislatures and other venues, and for a small non-profit organization we have a major impact. Yet for many people, especially our incarcerated supporters, much of this work is invisible.

We document our efforts in our annual report, however, which gives a good overview of the depth and breadth of our activities. Please make a donation to support HRDC and the work we do to protect the human rights of prisoners in the U.S. There are very few organizations doing the work we're doing, and few if any manage to get as much bang for the advocacy buck. All donations to HRDC are tax deductible.

Lastly, our Subscription Madness campaign is continuing until the end of the year (see the ad on page 17). Please help us boost our circulation if you are unable to make a donation; expanding our readership helps keep our costs down and increases the influence and impact we have. Enjoy this issue of *PLN*, and please encourage others to subscribe. ■

## Roget's Thesaurus

Can't think of the right word?  
Let Roget's help you! Over 11,000  
words listed alphabetically.  
See page 61 for more information.

**INMATE SHOPPER**  
Includes NFL FOOTBALL  
NFL TEAM Schedules & NFL WEEK Schedules

**NEW CONTENT**  
**NEW OWNER**

**INMATE SHOPPER**  
SUMMER 2014  
Hurricane Carter  
Censored Edition Available

**AMERICA'S MOST TRUSTED  
LARGEST & UP TO DATE  
GUIDE FOR INMATE SERVICES**

Sports Schedules	Non Nude Girls
Business Directory	Pen Pal Resources
LGBT Section	Gift Shops
Contest for Writers & Artists	Catalogs to Order
Articles, Tips & Facts	Sexy Photo Sellers
Resources	Typist
New Content Every Issue	Personal Assistants
Something for Everyone	Magazine Sellers
	Publishing Services

**Only \$24.99 Incl. S&H w/tracking**

⇒ Send Me the CURRENT ISSUE Inmate Shopper:

⇒ Send Me the NEXT ISSUE Inmate Shopper:  
☐ March ☐ July ☐ Nov/Holiday

⇒ Send Me the CENSORED ISSUE Inmate Shopper  
Without Pen Pal Content & No Sexy Girls - No More Rejections

**No Order Form Needed:**  
CLEARLY WRITE ON PAPER & SEND WITH PAYMENT TO:  
**INMATE SHOPPER**  
Box 533, NORTH DIGHTON, MA 02764  
WWW.INMATESHOPPER.COM



## State of Washington Prison Phone Justice Campaign

### Fighting the High Cost of Prison and Jail Phone Calls!

The Human Rights Defense Center (HRDC) has been reporting on the high cost of telephone calls from prisons, jails and other detention facilities in the U.S. for over two decades in its monthly publication *Prison Legal News*. An award of funds from the settlement in *Judd v. AT&T*, a prison phone-related lawsuit, has allowed us to launch the Washington Prison Phone Justice Campaign (WA PPJ). The goal of the campaign is to eliminate the kickbacks paid by telephone companies to detention facilities and to regulate the exorbitant rates charged to prisoners, their families and others who accept prison phone calls, including attorneys. Video visitation, which is following closely on the same path as the prison phone industry, has also been incorporated into the campaign.

HRDC co-founded the national Prison Phone Justice Campaign in 2011, which resulted in a historic vote by the FCC in August 2013 that capped the rates for **interstate** (long distance) prison phone calls at \$.25/minute for collect calls and \$.21/minute for debit and prepaid calls. Those rate caps became effective on February 11, 2014. While this has helped millions of families stay connected across state lines, it did nothing for prisoners incarcerated in Washington State who make local and **intrastate** (in-state) calls, estimated by the FCC to constitute 85% of all prison and jail calls.

Studies show that a prisoner's ability to communicate with family and friends while incarcerated results in a smoother transition upon release and reduces recidivism. However, excessive phone rates hamper and sometimes eliminate the ability of prisoners to stay in touch with their loved ones.

We need everyone affected by this issue, including prisoners' family members and attorneys, to sign on to the WA PPJ Campaign and tell us how they have been impacted by high prison and jail phone rates. This can be done by accessing the Campaign's website: **[www.wappj.org](http://www.wappj.org)**. Testimonials and video can be uploaded to the site, or people can call 1-877-410-4863 to record their comments. Or comments can be written and mailed to: HRDC, Attn: WA PPJ Campaign, P.O. Box 1151, Lake Worth, FL 33460. We also need billing records from prepaid accounts (2012 to current) for phone calls received from detention facilities, to demonstrate the actual rates charged to recipients of the calls. Billing records can be emailed to: [cwilkinson@humanrightsdefensecenter.org](mailto:cwilkinson@humanrightsdefensecenter.org).

Lastly, any donations to fund the campaign are both needed and appreciated; donations can be made at **[www.prisonphonejustice.org](http://www.prisonphonejustice.org)**. Only with your support will we be able to end the abusively high costs of prison and jail phone calls in Washington State. Thank you for your support, and please tell others about the Washington Prison Phone Justice Campaign and encourage them to join!



# Private Debt Collection Companies Contract with District Attorney's Offices

by David M. Reutter

**N**UMEROUS LAWSUITS HAVE BEEN FILED against companies that contract with prosecutors to collect debts in bad check cases because, opponents say, the firms contact debtors on official district attorney letterhead and use draconian tactics such as harassing people and threatening them with jail time if they don't pay the debts they owe plus additional fees.

Consumer protection groups claim the practices used by such companies, including California-based CorrectiveSolutions and Missouri-based BounceBack, would be illegal were it not for legislation passed by Congress following a vigorous lobbying campaign in which one of the companies spent hundreds of thousands of dollars to influence members of the U.S. House and Senate.

Critics say efforts by local governments to reduce costs and increase revenue have driven them to enter into contractual agreements that effectively give private firms law enforcement power and authority over citizens. Such collaborations allow the companies to profit from fees, debt collection and even public safety functions.

Privatization and outsourcing are not new to local governments; many have turned to private companies in recent decades for garbage collection, or to manage utilities such as water or park services. More recently, lured by promises of reduced expenses and new or increased revenue streams, some localities have contracted with companies to perform services that

extend to policing efforts and threaten to intrude on civil rights.

Such arrangements go beyond the well-known examples of privately-operated prisons and jails or the privatization of probation services and electronic monitoring for offenders on community supervision. [See, e.g.: *PLN*, Jan. 2014, p.18; Jan. 2012, p.20].

For instance, the town of Center Point, Alabama contracted with Arizona-based Redflex Traffic Systems, Inc. to set up traffic enforcement cameras in the city. The cameras would take photos of license plates on cars that ran red lights, and citations would be sent to the vehicle owners. The contract became the city's second-largest source of revenue, averaging between \$80,000 to \$100,000 per month; only sales taxes brought in more money.

The traffic cameras were deactivated in late 2012 after a class-action lawsuit challenged the appeals process for people who received citations through the Redflex program. Several claims were dismissed by a federal court in December 2013 and others were remanded to state court, which denied the defendants' motion to dismiss. The case remains pending. See: *Stubbs v. City of Center Point*, U.S.D.C. (N.D. Ala.), Case No. 2:13-cv-01200-KOB.

A class-action suit challenging a similar traffic camera program in five towns in New Jersey, also involving Redflex, settled in May 2014. The lawsuit alleged that drivers had been ticketed due to yellow lights that were timed too short. The company agreed to pay \$2.1 million plus attorney fees and costs of more than \$412,000. See: *Spector v. Cherry Hill Township*, U.S.D.C. (D. NJ),

Case No. 3:12-cv-05198-PGS-LHG.

But far more troubling, civil liberties and consumer advocates say, are agreements between private debt collection agencies and prosecutors' offices. According to the National District Attorney Association, such agreements exist across the nation – from California and Washington to Massachusetts and Maryland.

The two main debt collection firms, CorrectiveSolutions and BounceBack, enter into contracts that allow them to use the letterhead of local district attorney's offices to threaten bad check writers with prosecution and jail time. The companies collect millions of dollars through bad check diversion programs, and prosecutors sometimes get a cut of the fees charged by the firms – giving them a financial incentive to agree to such arrangements.

The collaboration between private companies and prosecutors, which has been ongoing since the 1980s, has led to a plethora of lawsuits.

In 2002, a federal court in Michigan ruled that by using district attorney letterhead and threatening consumers with criminal penalties, a company called Check Enforcement Unit, Inc. had violated the Fair Debt Collection Practices Act and Michigan Collection Practices Act. The court awarded a judgment of \$1,000 to the plaintiff – the maximum statutory amount – plus \$77,680.44 in attorney fees and costs. See: *Gradisher v. Check Enforcement Unit, Inc.*, 210 F.Supp.2d 907 (W.D. Mich. 2002).

In another case, a federal court in California heard arguments that District Attorney Technical Services, Ltd. (DATS),

## SMITH'S GUIDE to HABEAS CORPUS RELIEF for State Prisoners under 28 U.S.C. §2254

Example pleadings from the initial habeas corpus petition to the final petition for a writ of certiorari. Let Smith guide you step-by-step through the federal courts with confidence. 380 pages.

\$24.95 + \$6.95 shipping & handling. In CA add \$2.18 sales tax. Sent via USPS media mail. Money orders, personal or institutional checks ONLY. Send \$31.90 (In CA, \$34.08) payable to Roberts Company.

Send name, address, prisoner #, and payment to:  
**Roberts Company, 15412 Electronic Lane #101  
Huntington Beach, CA 92649**  
Also available on Amazon.com

## inmateMAGS formerly MyMagstore.com

Buy 1200 **SINGLE** Copies of Magazines • 1200 **Subscriptions** • **VIP Service**  
1800 **Newspapers** • Payment with **Stamps** • **Prepaid Accounts**  
Send \$3 or 10 Stamps for **50+ Page Full Catalog** (\$3 Discount Coupon Included)

**InmateMAGS.com**  
4208 University Way NE  
Seattle, WA 98105

**www.inmateMAGS.com**  
Info@inmateMAGS.com  
206-322-6397



a debt collection company, charged unlawful fees, pretended to be the district attorney's office and made false threats to arrest bad check writers. The court held that such practices violated the Fair Debt Collection Practices Act and California law. The case resulted in a \$741,387.05 judgment against the company and an individual defendant, although DATS filed for bankruptcy and only \$160,286.78 was recovered. See: *Schwarm v. Craighead*, 814 F.Supp.2d 1025 (E.D. Cal. 2011).

American Corrective Counseling Services (ACCS), the predecessor of CorrectiveSolutions, has been sued in California, Florida, Indiana and Pennsylvania – the latter suit resulting in a \$2.55 million settlement in 2009. In one case, the California District Attorneys Association filed a friend of the court brief in support of the company.

In San Jose, California, a class-action suit was brought against ACCS and the company's owners, Donald R. Mealing and Lynn R. Hasney, who reportedly made millions by charging fees for a bad check diversion class and imposing other fees on bad check writers. The district court

found they had violated the Fair Debt Collection Practices Act by impersonating the district attorney's office in letters and phone calls to debtors, and by claiming they would prosecute anyone who did not pay the fees. See: *Del Campo v. American Corrective Counseling Serv.*, 718 F.Supp.2d 1116 (N.D. Cal. 2010). Following a trial and class decertification, the case settled in May 2014, after 13 years of litigation, for \$225,000 to \$250,000.

District attorneys have defended their collaboration with private debt collection companies. "It's hugely beneficial to taxpayers because we as prosecutors can then assign resources to more violent crimes and save taxpayers thousands of dollars every year," said Gerald Stewart, the second assistant district attorney in Suffolk County, Massachusetts.

Stephanie Guyotte, a spokeswoman for Middlesex County, Massachusetts District Attorney Gerard Leone, agreed. "Those who have committed a crime of larceny are given the opportunity to not be criminally prosecuted, while the victim merchants have the opportunity to have the matter addressed in lieu of filing a criminal

complaint."

However, Paul Arons, an attorney who has filed multiple class-action lawsuits against CorrectiveSolutions, characterized the prosecutors' actions as "unethical."

"This is guilty until proven innocent," he stated. "Their letters [from the debt collection firms] come on letterhead from the district attorneys. That's a lie. They're not from the district attorneys.... What the DAs are doing is renting out their stationery."

Arons also said it is misleading for the companies to threaten bad check writers with criminal prosecution. "It is rare that anyone ever gets prosecuted for a bad check," he noted. "You don't even have to attend the classes as long as you make good on the check."

Consumer advocates worry that the arrangements allow for-profit companies, under the guise of district attorney's offices, to bully accused bad check writers for private gain. In some states, writing a bad check is not a crime unless it was done with the intent to commit fraud.

"I would be surprised if there were not a disproportionate number of low-income, less sophisticated people who get these

## Professional Paralegal Services

"You Deserve Due Diligence, Not Just Due Process."



### PPS Is Prepared To Offer You:

- High quality parole packages with color photos -- \$250.00
  - This includes:
    - communicating with family and friends to help you coordinate your support system;
    - working closely with our clients in editing their package to maximize their potential for parole; and
    - explaining to family and loved ones how the parole process works.
  - PPS also assists in obtaining court documents, case law, and legal records; \$40.00 min. plus the cost of the records
  - Explaining to families and loved ones the processes of prison life;
- Let me use my behind-the-bars experience to help get you home

**Gary Hunter**  
411 McCauley Blvd  
San Antonio, TX 78221

(210) 422-3685 Fax (210) 922-4348  
letstalknowandlater@gmail.com

**Lone Wolf of Arkansas**  
1015 Townsend Drive  
Pocahontas, AR 72455  
1-870-222-0270  
lonewolfbusiness.com

**Lone Wolf of Arkansas**  
is offering a Training program designed to be taken as a correspondence course while incarcerated and applied when released. As a Freight Agent for Lone Wolf you will earn commission on loads of freight. Contact us for more details.  
S.A.S. .

## Private Debt Collection (cont.)

letters,” said Nadine Cohen, managing attorney for the Greater Boston Legal Services’ consumer rights unit.

Faced with public pressure due to news media coverage, district attorneys in six Massachusetts counties ended their contracts with CorrectiveSolutions and BounceBack in February 2013 out of “an abundance of caution.”

“When I took a look at the letter that goes out, I didn’t feel it was appropriate because it was giving the erroneous impression that it was being sent by me, as opposed to BounceBack,” said David Sullivan, the chief prosecutor in Northwestern County, Massachusetts. “So I pulled the plug.”

David Cotney, the state Commissioner of Banks, had told prosecutors that the debt collection firms were not complying with the Massachusetts Consumer Protection Act; however, bad check writers in Massachusetts continued to receive letters from the companies for another three months.

“It is truly unfortunate that the district attorneys didn’t immediately shut the whole

thing down and stop the collectors from fleecing the public, who the DAs are bound to protect,” said Robert Bertling with the Harvard Legal Services Center.

The practice of using private companies to collect bad check debts is highly profitable. A study by *The Boston Globe* determined that on average, bad check writers in Massachusetts paid roughly double the value of the checks they bounced. In just four counties, for example (Suffolk, Middlesex, Cape and Islands, and Northwestern), CorrectiveSolutions and BounceBack collected a combined \$103,216 in bad check debts in 2011. They also collected \$107,186 in fees. Almost \$9,000 of the fee income was shared with prosecutors.

Matthew Connolly, a former deputy district attorney in Norfolk, Massachusetts, accused prosecutors of abdicating their responsibility by contracting with debt collection firms. “By doing so they are enriching a private company while intimidating people wrongly and charging them exorbitant fees,” he said. “It’s outrageous.”

Nationwide, more than 300 district attorney’s offices have contracts that essentially loan out their letterhead to private collection companies. The impression the companies give – which concerns consumer protection advocates – is that the failure of the bad check writer to respond and pay what they owe, including fees, could lead to criminal charges.

Kathy Pepper accidentally wrote a \$68 bad check in the midst of a divorce that made a mess of her finances. She received a letter signed by the district attorney for Santa Clara County, California, advising her that a “bad check restitution program” would allow her to avoid “the possibility of further action ... by the District Attorney’s Office.”

Fearing prosecution, she agreed to pay \$170 to attend a “financial accountability” class. The letter had actually been sent by CorrectiveSolutions without a prosecutor determining whether she had committed a crime.

In 2012, *The New York Times* reviewed five agreements between prosecutors and CorrectiveSolutions. The agreements allowed businesses to send bad checks directly to the company, bypassing the prosecutor’s office altogether. The businesses first had to make an attempt to contact the debtor, but they could turn the bad checks over to a collection agency after only 10 days.

CorrectiveSolutions is by far the larger of the two debt collection firms. The company boasts “over 140 prosecutor offices as customers. Those offices are in jurisdictions with a total population of over 55 million.” Meanwhile, Gale Krieg, a vice president at BounceBack, said his company has contracts with district attorneys in 38 states.

Bad checks are big business. According to data from the Federal Reserve System, about \$127 billion in bad checks was incurred nationwide in 2009, though statistics show that number had fallen from \$182 billion in 2006.

In the first half of 2012, CorrectiveSolutions sent out 16,955 letters on behalf of the Los Angeles County district attorney’s office. County data indicates that only 635 people attended the company’s diversion classes. There was no oversight by prosecutors.

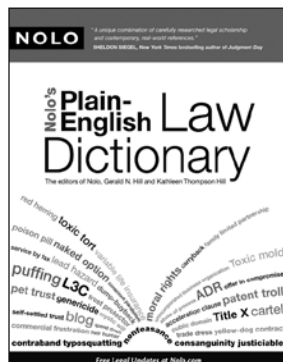
Priscilla Cruz, an assistant director in the Los Angeles County district attorney’s office, said no one reviews bad check cases before CorrectiveSolutions sends the letters.

Debt collection companies operate with impunity thanks to a loophole created in federal law in 2006 following vigorous lobbying efforts by proponents of bad check repayment programs, CorrectiveSolutions, BounceBack and the National District Attorneys Association. An exemption was added to federal law for debt collection firms representing prosecutors, despite opposition from Public Citizen, the National Consumer Law Center and other consumer advocacy groups.

With only a few qualifying criteria, the exemption allows debt collection companies to use district attorney letterhead to send letters to bad check writers, threaten them with jail time and collect fees.

According to ProPublica, CorrectiveSolutions spent more than \$660,000 on lobbying between 2003 and 2006, and made donations to key U.S. Senators such as Sen. Christopher Dodd, and prominent House members such as Rep. Barney Frank – then a member of the House Financial Services Committee. Rep. Frank said he supported the exemption because bad check programs help people avoid criminal records.

Yet critics claim that some district attorneys appear to have delegated their “prosecutorial discretion” – the decision as to which cases to prosecute – to debt collection firms. And as partnerships between



### Nolo's Plain-English Law Dictionary

\$29.99

Order from

**Prison Legal News**

P.O. Box 1151

Lake Worth, FL 33460

561-360-2523

Add \$6 shipping for orders under \$50

[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

private companies and prosecutors proliferate, more and more people risk having their rights and freedom determined by corporations that are primarily concerned with generating profit.

Meanwhile, lawsuits continue to challenge the practices of private debt collection companies that collude with district attorney's offices.

A class-action suit filed in federal court in the Northern District of California settled in March 2014, with a member class of around 500,000 consisting of "all individuals who received written communications in connection with Bad Check Diversion Programs operated by National Corrective Group or American Corrective Counseling Services in California between January 4, 2006 and August 31, 2011 or in Pennsylvania between January 25, 2004 and August 31, 2011." Pursuant to the settlement, the defendants agreed to pay \$3.25 million, inclusive of \$700,000 in attorney fees and costs. See: *Smith v. Leichtman*, U.S.D.C. (N.D. Cal.), Case No. 10-cv-00010-JSW.

And on July 18, 2014, a class-action lawsuit was filed in Washington state against BounceBack and its parent com-

pany, Stone Fence Holdings, claiming violations of the state Consumer Protection Act and the Fair Debt Collection Practices Act. According to *Courthouse News Service*, BounceBack "rented" county prosecutor's seals to threaten consumers with jail time unless they paid alleged debts, and gave the prosecutors a share of the collection fees." See: *Cavnar v. BounceBack, Inc.*, U.S.D.C. (E.D. Wash.), Case No. 2:14-cv-00235-RMP.

Due to such lawsuits and media coverage, public officials are starting to take action. In June 2013, Oregon Governor John Kitzhaber signed into law a bill that ended bad check diversion programs involving private companies and prosecutors' offices in that state. The law went into effect in January 2014; a similar bill was introduced in Washington in 2013, but failed to pass. ■

Sources: *The New York Times*, [www.blog.al.com](http://www.blog.al.com), [www.checkrestitution.com](http://www.checkrestitution.com), [www.correctivesolutions.org](http://www.correctivesolutions.org), *The Boston Globe*, [www.ocweekly.com](http://www.ocweekly.com), *Courthouse News Service*, <http://bracketprograms.com>, [www.firedflex.com](http://www.firedflex.com), [www.insidearm.com](http://www.insidearm.com)

## SUBSCRIPTION MADNESS 2014

Our Subscription Madness promotion has been so successful in the past that we have decided to offer it again!

PLN is offering a discount on blocks of 2 or 4 one-year subscriptions for any person not a current or former subscriber who has a US address, whether they are imprisoned or not. Subscription Madness is the only opportunity attorneys, librarians and corrections professionals have to receive a PLN subscription at a fraction of the normal rate of \$90 per year, and for prisoner family members and concerned activists to subscribe at a steep discount from the normal rate of \$35 per year. Prisoner subscriptions are also less than the normal \$30 per year. Check out these discounts!

- **\$50 buys 2 one-year subscriptions (\$25 each)**
- **\$80 buys 4 one-year subscriptions (\$20 each)**

If you want to take advantage of Subscription Madness but are stumped for people to send them to, PLN can provide names of indigent prisoners who would love a PLN subscription. Use a separate piece of paper to order by mail, call our office to order with a credit card, or go to our website to order online. **No Renewals!** Sorry, but Subscription Madness is for new one-year subscriptions only, and cannot be used to renew or extend a current or former subscription. PLN is a 501(c)(3) non-profit. (Subscription Madness 2014 expires 12-31-2014).

**Prison Legal News, PO Box 1151, Lake Worth, FL 33460**  
**561-360-2523; [www.prisonlegalnews.org](http://www.prisonlegalnews.org)**

# LEARN TO PROTECT YOUR RIGHTS

## YOU HAVE A RIGHT TO

- Adequate medical care
- Protection from assault
- Humane living conditions
- Safety from officer abuse

Learn how to defend your basic human rights with the comprehensive litigation guide, **Protecting Your Health and Safety**, 2nd edition, written specifically for prisoners who are unable to receive help from a lawyer.

Written by Robert E. Toone  
Edited by Dan Manville  
*A Project of the Southern Poverty Law Center\**

**COST** \$16 total  
(\$10 + \$6 shipping/handling)  
FREE shipping/handling for orders from Prison Legal News over \$50

## ORDER A COPY

Send a check  
or money order to:  
**Prison Legal News**  
**PO Box 1151**  
**Lake Worth, FL 33460**  
**561-360-2523**

*Be sure to include your name, identification number (if any), and mailing address. We also accept VISA and Mastercard. If using a credit card, please include the type of card (VISA or Mastercard), card number, and expiration date.*

This book does not deal with legal defense against criminal charges or challenges to convictions that are on appeal. Edition last revised in 2009.

\*Please do not send orders to the Southern Poverty Law Center.



## CCA Has Long History of Wage Violations, Poor Treatment of Employees

ON AUGUST 20, 2014, CORRECTIONS Corporation of America (CCA), the nation's largest for-profit prison operator, issued a press release that attempted to put a positive spin on over \$8 million in back wages the company had agreed to pay to employees at one of its facilities.

According to the U.S. Department of Labor (DOL), CCA had paid 30 to 40 percent less than required under rules for federal contractors to workers at the company's California City Correctional Center. CCA was also accused of failing to make required payments to employees' retirement and health and life insurance accounts, as well as violations related to "inaccurate recording of breaks, lunches and overall hours worked," according to the Associated Press. Some employees will receive more than \$30,000 in back pay.

"The people that get these federal monies from a federal agency to get one of these contracts have to abide by the wage rates," stated Eduardo Huerta, assistant director of the DOL's wage and hour division.

CCA claimed the \$8 million payment for back wages was due to a "retroactive contract modification" by federal officials, and said it had "diligently" and in "good faith" worked with the Department of Labor to ensure employees received the pay they were owed.

"We greatly value our employees and the important work that they do to keep our communities safe and secure," said CCA spokesman Steve Owen.

However, the company did not mention that it has repeatedly been sued by its own employees for failing to pay required wages. In fact, CCA settled an earlier wage and hour lawsuit involving the California City Correctional Center for an undisclosed amount in 2004, and has paid millions to resolve other wage-related cases over the past dozen years.

Most recently, on August 13, 2014, a federal court in Kentucky unsealed a settlement in a wage and hour lawsuit filed against CCA. The case had settled in November 2013, with the company agreeing to pay \$260,000 to 25 shift supervisors who claimed they were denied overtime and required to work extra hours without compensation.

The settlement was unsealed – over CCA's objections – after Prison Legal News intervened in the case to make the settlement public. The district court held that CCA had failed "to overcome the presumption in favor of permitting public access" to the settlement, and thus it "must be open to public inspection." PLN was represented by the ACLU of Kentucky. See: *Johnson v. CCA*, U.S.D.C. (W.D. Ky.), Case No. 3:12-cv-00246-JGH.

Also, in August 2009 the U.S. District Court for the District of Kansas unsealed a \$7 million settlement agreement in a class-action wage and hour lawsuit against CCA. The suit, brought under the Fair Labor Standards Act, alleged that CCA had required some employees to perform work duties "without compensating them for all such hours worked." Specifically, the company was accused of not paying correctional officers and other employees for pre- and post-shift work that included roll calls, obtaining weapons and equipment, attending meetings and job assignment briefings, and completing paperwork. Again, the settlement was made public, over CCA's objections, after Prison Legal News intervened to unseal details of the agreement, which applied to more than 30,600 potential class members nationwide. [See: *PLN*, Jan. 2010, p.20; Oct. 2009, p.31].

"The public has a right to know how its tax dollars are being spent when government agencies contract with for-profit companies like CCA to operate prisons and jails, especially when such companies are accused of violating the law to increase their profit margins," said PLN managing editor Alex Friedmann.

Additionally, according to records produced by CCA, in 2002 the company paid \$2 million to resolve three federal lawsuits

### Simple Business Consulting Prisoner Outreach Services

SIMPLE BROCHURE - SIMPLE PRICING  
FAST PROFESSIONAL SERVICE  
YOU CAN SET UP A SERVICE ACCOUNT  
FLAT FEES OR RETAINER FOR TERM PROJECTS

#### FINANCIAL REQUIREMENTS

NO BANK ACCOUNT  
NO MINIMUM BALANCE  
NO MONTHLY FEE  
NO MEMBERSHIP FEE  
NO APPLICATION

PUBLISHING - VIRTUAL OFFICE - GRAPHIC DESIGN - MARKETING - BUSINESS

#### Make a change today!

Do you have an idea, dream, goal or plan you have been wanting to develop? What are you waiting for?



Send SASE for our brochure....  
It is that  
**SIMPLE!**

SIMPLE BUSINESS CONSULTING  
3308 ROUTE 940 - SUITE 104-304  
MOUNT POCONO, PA 18344  
WWW.SIMPLEBUSINESSCONSULTING.COM

## PENACON.COM

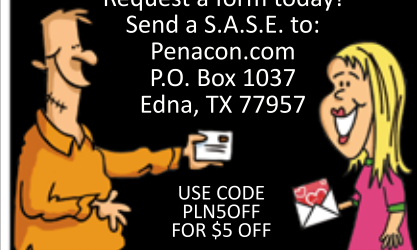
Helping the incarcerated community gain connections around the world!

Post your profile on an easy to navigate website for millions of viewers to see. Gain new penpals and look forward to receiving mail!

One Year Ad Only \$35  
Until Release Date Ad \$95

#### Request a form today!

Send a S.A.S.E. to:  
Penacon.com  
P.O. Box 1037  
Edna, TX 77957





filed by employees in Mississippi under the Fair Labor Standards Act. And according to a report issued last year by Grassroots Leadership, titled "The Dirty Thirty: Nothing to Celebrate About 30 Years of Corrections Corporation of America," in 2000 the company had settled lawsuits alleging wage and hour violations at the CCA-operated Winn Correctional Center in Louisiana and San Diego Correctional Facility in California.

The company has also faced litigation related to employment discrimination, retaliation and sexual harassment at its for-profit prisons.

For example, CCA entered into a consent decree with the Equal Employment Opportunity Commission (EEOC) on October 1, 2009, agreeing to pay \$1.3 million to settle allegations of sexual harassment and retaliation involving female employees at the Crowley County Correctional Facility in Colorado, operated by Dominion Correctional Services and later by CCA.

According to the lawsuit, female staff members were subjected to "unlawful sexual harassment and gender-based harassment." The complaint alleged female employees had been hired based on whether they might be "easy to get to bed." After being hired they were "routinely groped, pawed, and physically assaulted by male management and male co-workers." Those who complained were subjected to retaliation, such as false charges to justify retaliatory discipline, assignments to areas where there was an increased risk of harm and intentionally assigning female employees to work with their alleged harassers, exposing them to "actual and threatened abuse." [See: *PLN*, May 2010, p.46].

Further, in 2007, CCA paid \$438,000 to settle claims of discriminatory hiring practices at the company's Central Arizona Detention Center in Florence; the U.S. Department of Labor said CCA had violated federal law by disproportionately rejecting non-Hispanic job applicants who sought employment during a two-year period. The company agreed to hire 16 applicants who had been rejected, but denied any wrongdoing. [See: *PLN*, Sept. 2007, p.25].

And in 2002, CCA settled a gender discrimination suit by agreeing to pay \$152,000 in back wages to 96 women who had applied for jobs at the company's facility in Sayre, Oklahoma but were not hired. The settlement was reached after an audit by the U.S. Department of Labor found that female applicants with equal or better qualifications than their male counterparts

had been rejected due to their gender. [See: *PLN*, May 2003, p.13].

According to a list of lawsuits filed against CCA, produced by the company itself, CCA has also settled dozens of individual complaints brought by current and former employees raising claims of sexual harassment, discrimination and wrongful termination.

Additionally, a federal jury in Oklahoma found that CCA had violated the rights of a military veteran by failing to retain his job position after he returned from a tour of duty in Iraq. Jurors recommended in August 2010 that the company pay veteran Dennis Weems around \$53,000 for violating the Uniformed Services Employment and Re-employment Rights Act, which prohibits employers from denying re-employment, retention in employment, promotion or any benefit of employment to a member of the military on the basis of their military service. See: *Weems v. CCA*, U.S.D.C. (E.D. Okla.), Case No. 6:09-cv-00443-JHP.

An attorney for CCA admitted that mistakes had been made in that case, while Weems claimed CCA had violated the rights of other veterans who returned to their jobs

at the company following military service – such as re-hiring them at lower pay rates.

"It appears that in some cases, CCA treats its own employees with the same disdain that it treats prisoners held in the company's for-profit facilities," said Friedmann, who served six years at a CCA-operated prison in Tennessee in the 1990s.

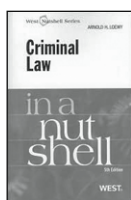
In May 2013, at CCA's annual shareholder meeting, Friedmann had requested a brief moment of silence for company employee Catlin Carithers, who had been killed during a riot at the Adams County Correctional Facility in Mississippi. His request was flatly denied by CCA board president John Ferguson. [See: *PLN*, June 2014, p.48].

"CCA holds a shareholder meeting just once a year, and they couldn't give 30 seconds to honor the memory of one of their own who died in the line of duty," Friedmann said at the time. "That is callous and insensitive. It is also indicative of the value that CCA places on its employees."

Apparently, that value is fairly low. ■

Sources: *HRDC press release* (Aug. 22, 2014); *www.privateci.org*; *Associated Press*

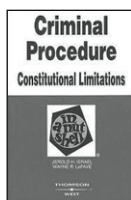
## New Titles Available in PLN's Bookstore



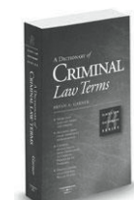
**Criminal Law in a Nutshell**, by Arnold H. Loewy, 5th edition, 387 pages. **\$43.95**



**Advanced Criminal Procedure in a Nutshell**, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **\$43.95**



**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFave, 7th edition, 603 pages. **\$43.95**



**A Dictionary of Criminal Law Terms (Black's Law Dictionary® Series)**, by Bryan A. Garner, 768 pages. **\$33.95**

☐ Criminal Law in a Nutshell ☐ Advanced Criminal Procedures in a Nutshell ☐ Criminal Procedure  
☐ Dictionary of Criminal Law Terms

Amount enclosed (add \$6 S&H for orders under \$50; free shipping over \$50) \_\_\_\_\_

By ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**PRISON LEGAL NEWS**

PO Box 1151 • Lake Worth, FL 33460  
Tel [561] 360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

# Do Residency Bans Drive Sex Offenders Underground?

by Steven Yoder

**E**ARLY LAST YEAR, LOS ANGELES SET aside a sliver of land in its Harbor Gateway neighborhood for the city's newest and smallest park: two jungle gyms on a fifth of an acre.

The project was more than just an effort to increase the city's green space. City Council members made clear that one of the park's principal reasons for existence was to force 33 people on the California sex offender registry who were living in a nearby apartment building to move out. State law bars those on its registry from living within 2,000 feet of a park or school.

"We came together, working with the police department, to problem-solve, to send a message that Harbor Gateway cannot be dumped upon with a high number of registered sex offenders," councilman Joe Buscaino said at the park's opening.

But the state ban itself already clusters registrants into a limited number of areas, according to a September 2011 report by the California Sex Offender Management

Board, which was created by the state legislature to advise it on sex offender policies.

California hasn't been alone in its tough approach to ensuring that formerly incarcerated sex offenders pose no danger after they are released. As part of a wave of new sex offender laws starting in the mid-1990s, about 30 states and thousands of cities and towns passed such residency restrictions – prompting in turn a pushback from civil liberties advocates, state legislators and registrants themselves who argued the restrictions were not only unduly harsh but counterproductive.

But a court decision in Colorado last year could mark a shift in momentum.

In the Colorado case, Stephen Ryals, a high school soccer coach convicted in 2001 for a consensual sexual relationship with a 17-year-old student, was sentenced to seven years' probation and put on the state sex offender registry.

Eleven years later, in 2012, he and his wife bought a house in the city of Englewood. But the police department told him he couldn't live there because of a city ordinance prohibiting sex offenders from living within 2,000 feet of schools, parks and playgrounds – a law that effectively made 99 percent of its homes and rentals off limits to offenders.

Englewood police also warned offenders that even in the open one percent, if they contacted a homeowner whose property wasn't for rent or for sale, they could be charged with trespassing.

Ryals sued, and last August a federal

court concluded that the city's ban went too far. [See: *Ryals v. City of Englewood*, 962 F.Supp.2d 1236 (D. Colo. 2013)].

The judge ruled that it conflicted with the state's existing system for managing and reintegrating sex offenders and could encourage other towns and cities to do the same, effectively barring offenders from the entire state. Englewood has appealed, but two of the state's five other cities that have residence bans have softened their restrictions since the decision.

The other three are awaiting the outcome of the appeal, according to John Krieger of the American Civil Liberties Union (ACLU) of Colorado, which represented Ryals.

## Rolling Back Restrictions

IN CALIFORNIA, SCORES OF CITIES ARE rolling back their restrictions after an Orange County court ruled in favor of registrant Hugo Godinez, who challenged the county over its ordinance barring sex offenders from entering parks.

Godinez, convicted for a misdemeanor sex offense in 2010, was arrested the following year for what he said was mandatory attendance at a company picnic in a county park. In that case too, a state appeals court decided that the county's ordinance usurped the state's authority. The appeals court ruling was upheld by the state's highest court in April 2014. [See: *People v. Godinez*, 2014 Cal. App. Unpub. LEXIS 159, review denied].

Since the *Godinez* decision, 28 California cities that have similar "presence" restrictions, which ban offenders from entering places like libraries and parks, have repealed those rules. Another 24 say they are revising their ordinances, according to Janice Bellucci, a California attorney.

Since the April decision, Bellucci, who represents the advocacy group California Reform Sex Offender Laws, has sent letters demanding repeal to cities with presence restrictions. She also has sued a dozen other cities that haven't changed their rules since the decision.

And this year, California's Supreme Court could make an even bigger ruling – whether to toss the state's 2,000-foot law itself.

### WINNING HABEAS CORPUS & POST CONVICTION RELIEF Revised 4th Ed. 2012

Main subject: Ineffective Assistance of Counsel "IAC"

Atty Kent Russel writes: "Simply the best source for a quick study on major subjects in the criminal process."

- ◊ A virtual law library in a book, major constructional issues
  - ◊ 6th Amendment & IAC, Duty to investigate
  - ◊ Forensics, Plea IAC, Jury Instructions
- ◊ §2254 & 2255 Procedure, Clearly established law

### POST CONVICTION RELIEF FOR WASH. STATE- Personal Restraint Petition

The only book for Wash. State prisoners who seek collateral review by PRP or CrR 7.8 motion. Covers all aspects of preparing a PRP, time bar, facial invalidity, Plea bargain, sentencing, incl. case law & rules.

ORDER: (price incl. tax, plus S&H)

- |                                      |          |
|--------------------------------------|----------|
| [ ] Winning Habeas Corpus...         | \$ 59.50 |
| [ ] Post Conviction Relief for Wash. | \$ 49.50 |
| [ ] Both Books                       | \$ 95.00 |

To: FAST LAW PUBLISHING

Box 577, Upland CA 91785 On-line [www.fastlaw.org](http://www.fastlaw.org)

## Pen Pals for Prisoners

Your ad on the Internet worldwide:

One year for \$9.95. Mail name &

address for FREE order form or online:

[www.PrisonerPal.com](http://www.PrisonerPal.com)

PO Box 19689

Houston, TX 77224

A Los Angeles County Superior Court judge found it unconstitutional in 2010, but the city appealed. The judge cited an increase in homelessness among registrants as a key reason. Statewide, the number of homeless registrants has doubled since the law passed in 2006, according to the 2011 Sex Offender Management Board report.

At least two other states – Rhode Island and New York – have been sued since 2012 over their own residency laws.

One finding in the Ryals' case in Colorado could resonate in other states.

The judge found compelling a 2009 white paper by Colorado's Sex Offender Management Board that concluded residency bans don't lower recidivism and could actually increase the risk to the public. According to the paper, that's because they drive offenders underground or toward homelessness, making them harder for police and probation officers to track.

Often the most stable place for an offender to live is with family members. But if they have homes in prohibited areas, the offender might instead try to drop off the registry by failing to report their permanent

address, says Sara Neel of the Colorado ACLU. The problem, which isn't specific to Colorado, could strengthen court challenges in other states, she says.

Those 2009 findings led the Colorado board to go further in a report this January, which recommended that state lawmakers consider legislation prohibiting cities and towns from enacting their own offender residency rules.

Two other states have moved in that direction. The Kansas legislature banned local residency restrictions in 2010. And in New Hampshire, the state House of Representatives has twice approved a bill that would bar local ordinances, though it's died both times in the state Senate.

Bellucci argues that there's more to come in other states. The "pendulum of punishment," she claims, is starting to swing the other way.

"For a long time, ever-harsher sex offender laws were being passed and there was no one opposing them," she told The Crime Report. "After more than a few lawsuits, elected officials are realizing that there's a downside to this." (A spokesperson for the National Center for Missing & Exploited

Children, which has supported stronger sex offender laws like the federal Adam Walsh Act, said it had no one available to comment on the center's position on residency restrictions).

Sponsors of the New Hampshire bill say they'll keep trying, and it's gained some unlikely allies.

"My first term, I was pretty much a hard-liner," said Republican representative Larry Gagne during a January committee hearing.

"I said, 'Put [sex offenders] in outer space; put them all on an island.' But I changed my mind after a [police] sergeant came in and said, 'If they go underground, we can't find them.'"

*Steven Yoder writes about criminal justice, immigration and other domestic policy issues. His work has appeared in Salon, The Fiscal Times, The American Prospect and elsewhere, and he's working on a book about the impact of sex offender registries on registrants' families.*

*This article was first published by The Crime Report ([www.thecrimereport.org](http://www.thecrimereport.org)) on July 7, 2014; it is reprinted with permission.*

## Stamps for CASH!

*Great Goods will buy your stamps!*

**70%** of Face Value: Complete books or sheets of Forever Stamps

**65%** of Face Value: Complete books, sheets, or rolls of 45-cent stamps

**60%** of Face Value: Complete books or sheets of high denomination stamps above 45-cent

**Payment sent within 24 hours of receipt.**

**WE** WILL SEND your funds as a money order, electronic payment to anywhere you designate. Great Goods can also send payment to an approved package vendor. Please provide complete name and address of where to send your funds. Also include any required forms or special instructions.

Minimum money order of \$20. • No quantity of stamps too big. • No taped or stapled stamps. • Used, damaged, torn stamps not accepted and cannot be returned. • Stamps **MUST** be on original postal backing. • Only new stamps accepted.

• No singles or partials will be accepted and they cannot be returned.

## GREAT GOODS

PO Box 399, West Chesterfield NH 03466

[www.greatgoods.org](http://www.greatgoods.org)

STAMPS © USPS. ALL RIGHTS RESERVED.

# Settlement Opens Georgia Courtrooms to the Public

by David M. Reutter

**H**UMAN RIGHTS GROUPS HAVE APPLAUDED efforts to open Georgia courts to members of the public, putting an end to a widespread practice of courtrooms being declared off limits – a practice that was condemned as a violation of the Sixth Amendment because it erodes the public's right to observe the judicial system.

In November 2013, Superior Court judges in the Cordele Judicial Circuit – which includes Ben Hill and Crisp counties – agreed to a settlement that resolves a class-action suit filed on behalf of citizens who were prohibited from attending court hearings. The lawsuit was brought by the Atlanta-based Southern Center for Human Rights (SCHR). See: *Fuqua v. Pridgen*, U.S.D.C. (M.D. Ga.), Case No. 1:12-cv-00093-WLS.

The settlement followed two rulings by U.S. District Court Judge Louis Sands, who denied motions to dismiss the class-action suit.

"Judge Sands has clearly stated that the

public has a right to view court proceedings, and after a long and hard road, the judges in Ben Hill and Crisp counties have finally seen the light," said SCHR attorney Gerry Weber. "A closed courtroom is one that is less accountable to the public. What is done behind closed doors can be different to what is done in the cold light of day," he added.

Pursuant to the settlement, among other provisions the parties agreed that "The First Amendment requires all pre-trial proceedings held in Ben Hill and Crisp counties, whether in jail courtrooms or elsewhere, be presumptively open to the public." Further, courtrooms should not be closed unless there are "documented findings of fact justifying a compelling interest in the public's exclusion in a particular case, and the consideration of narrowly tailored alternatives to closure." The defendants also agreed to pay \$40,000 in attorneys' fees to the SCHR.

The class-action lawsuit, filed in June 2012, alleged that defendants' family members and friends – and in one case even a pastor – had been prohibited from attending court sessions. According to the complaint, members of the public were barred unless they could show they were related to defendants who were appearing in court.

Judges had cited limited space in law enforcement center courtrooms, as well as security concerns related to transporting defendants to county courthouses where larger courtrooms were available, as reasons for restricting court attendance to defendants' family members.

The settlement addressed this issue,

stating: "In order to access public courtrooms, citizens need not answer questions from court or law enforcement staff, and Defendants must not demand that persons seeking entry explain who they are and their reasons for seeking entry in courtrooms."

In other positive steps, Fulton County Superior Court Judge Christopher Brasher quickly put a stop to the practice of closing courtrooms to the public after discovering it was occurring in his court. Brasher blamed "overzealous deputies," and ordered that no member of the public be denied access to his courtroom.

Fulton County Superior Court Judges Todd Markle and Robert McBurney also said they were unaware that the public was being barred from entering their courts, and that they had not given their approval for such practices.

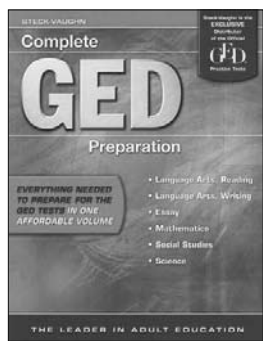
Jeffrey Davis, director of Georgia's Judicial Qualifications Commission (JQC), said the commission had issued a formal opinion in August 2013 after receiving numerous complaints from citizens who were denied access to courtrooms.

"Our efforts to educate judges about these issues have resulted in the type of response we would have anticipated," Davis said. "Judges are complying with the opinion and modifying practices accordingly. Since the issuance of our opinion, we have been encouraged by the response of judges and the willingness to bring their courts into full compliance with the law."

The argument that space in courtrooms is limited and security is threatened by moving defendants to larger county courthouses had been cited by a multitude of judges across Georgia who routinely barred members of the public from their courtrooms, according to a JQC report released following an investigation.

The report found that signs were posted on courtroom doors across the state, denying access to either the public in general or specific groups such as children. In many courts, the report said, bailiffs blocked entry to courtrooms even though members of the public have a legal right to attend court sessions.

"We've had our own investigators and commissioners go out and visit a courtroom and they have been greeted by a bailiff or a



## Complete GED Preparation [Paperback]

Publisher: Steck-Vaughn; 2nd edition  
928 pages; \$24.99; Item #: 1099

Over 2,000 GED-style questions thoroughly prepare learners for test day. This single book offers thorough coverage of the revised GED Test with new test information, instruction, practice, and practice tests. Answer key included.

Order from: **Prison Legal News**  
(Add \$6 shipping for orders under \$50)  
**PO Box 1151**  
**Lake Worth, FL 33460**  
**Phone: (561) 360-2523**  
**www.prisonlegalnews.org**

## law offices of Susan L. Burke

Please contact me if you want to join the class actions against telephone companies who have been overcharging inmates and their families for phone calls.

**Susan L. Burke**  
Law Offices of Susan L. Burke  
1611 Park Avenue  
Baltimore MD 21217  
Phone 410.733.5444  
Website: [www.burkepllc.com](http://www.burkepllc.com)



deputy sheriff and been told to state their business or otherwise they don't need to be there," said Marietta attorney Robert Ingram.

DeKalb, Cobb, Fulton and Towns counties have had courtroom closures challenged in state appellate courts.

"Openness, of course, is such a basic principle of the law in Georgia jurisprudence and U.S. constitutional jurisprudence," noted JQC Chairman John Allen. "You erode the confidence in the integrity and fairness of the courts by closing the courts as a matter of course."

However, prior to the JQC's opinion, Davis said it was "the modus operandi around the state for courts to have deputies who question those who are simply in the court without business before the court." He added, "People ought to be able to watch their government in action. And justice which is done in secret – or a feeling by those who are coming to the courthouse that somehow they don't have a right to be there – chills the public's ability not only to access the courts, but also to have confidence in the judicial system."

In *Presley v. Georgia*, 130 S.Ct. 721 (2010), the U.S. Supreme Court held that trial courts have an obligation "to take every reasonable measure to accommodate public attendance at criminal trials." That case, which reversed a ruling by the Georgia Supreme Court, involved a DeKalb County judge's closure of her courtroom during jury selection.

But in 2011, a year after the *Presley* decision, DeKalb County State Court Chief Judge Wayne Purdom posted signs limiting access to his courtroom on days he took jail

pleas, when numerous prisoners were in court and on arraignment days. At those times members of the public were admitted only "by request."

DeKalb County State Court Judge Barbara Mobley resigned in 2011 when faced with a 16-count JQC complaint that included allegations she had interfered with the public's right of access to her court. She was accused of "Directing courtroom bailiffs and other court personnel to question members of the public, and the bar, who are merely observing courtroom proceedings, and requiring them to identify themselves and state their business before the court, thereby chilling the public's right to observe matters before the court and restricting the public access to the court."

Atlanta attorney Brian Steele has pursued appeals in two cases involving the closure of courtrooms to the public. In a case strikingly similar to *Presley*, Steele challenged the barring of the public from jury selection during the 2009 rape trial of Corsen Stewart, including Stewart's mother, who was prohibited from entering the courtroom during *voir dire*.

Steele said he plans to use Stewart's appeal to try to overturn a 2010 Georgia Supreme Court ruling in the murder conviction of Travion Reid. In Reid's case, the trial court closed the courtroom during the testimony of two witnesses whom prosecutors said feared for their safety. The state Supreme Court refused to overturn the conviction because neither Reid nor his attorney had objected to the closure, but Chief Justice Carol Hunstein wrote in

a dissenting opinion that it was not Reid's responsibility to object.

"Although the majority concludes that Reid has not shown prejudice," Hunstein stated, "Reid is not required to do so in order to obtain relief for a structural error which was a violation of the public-trial right." See: *Reid v. State*, 286 Ga. 484, 690 S.E.2d 177 (Ga. 2010).

In the second case, a Towns County judge moved jury selection in a criminal case to a church and barred the public – including the defendant's wife and daughter – from attending. Steele asked an appellate court to reverse the conviction and order a new trial on that basis, but the justices instead granted a new trial on other grounds in 2011 and did not address the courtroom access issue.

In the Georgia Supreme Court's initial decision in the *Presley* case, then-Chief Justice Leah Ward Sears had noted in a dissenting opinion that lack of space is an inadequate reason to close a courtroom. "A room that is so small it cannot accommodate the public," she wrote, "is a room that is too small to accommodate a constitutional criminal trial."

Sears, who is now in private practice, said she sympathizes with judges dealing with small courtrooms that they are trying to keep secure. She sees a more important value at stake, however. "Public access is one of the cornerstones of our democracy," she said. "It's what keeps us free." ■

Sources: [www.dailyreportonline.com](http://www.dailyreportonline.com), [www.occupy.com](http://www.occupy.com), [www.schr.org](http://www.schr.org)

## CALIFORNIA LIFER NEWSLETTER

**Published by Life Support Alliance**

CLN: Comprehensive newsletter mailed every 8 weeks containing state and federal cases, parole board news, statistics, legislation and articles of interest to Lifers and their supporters.

### CLN SUBSCRIPTIONS

Prisoners .... \$30 per year (or 100 stamps)  
Others .... \$90 per year

**Make checks payable to LSAEF**

(Life Support Alliance Education Fund)

**CLN, P.O. Box 277, Rancho Cordova, CA. 95741**

*CLN no longer provides copy service of legal cases, articles or news and materials from the Internet.*

[www.lifesupportalliance.org](http://www.lifesupportalliance.org) (916) 402-3750

### Photo Tryst

**PO Box 103**

**Chapmansboro TN 37035**

### Quality Pics of Quality

**Babes**

All catalogs 450 full color pics

Summer 2013 free with SASE

All other catalogs \$4 or 10 forever stamps, and ship with a coupon for 5 free pics with your minimum order of 10

Winter 2014

Spring 2014

Topless #1 (contains frontal

Nudity)

All Nude #1 (you see it all)

Our next general (season) catalog free with each order

You can deposit funds with us and order your pics "on account"

We accept institutional checks, personal checks from

friends and family, and money orders

Stamp orders are only with stamp coupons obtained with regular orders

Oregon and Utah consistently deny our catalogs so we cannot do business there. Sorry

# Sentence Reductions for “Snitching” Undermine U.S. Justice System

by Derek Gilna

**I**MAGINE THIS SCENARIO: DRUG ENFORCEMENT Administration (DEA) agents bust a small-time drug dealer for, let’s say, nickel-and-diming in heroin. They take him to booking, run his fingerprints and discover this is his third arrest. As a multiple offender facing a long stretch in prison and with a public defender at his side, the suspect offers a deal.

“Cut my sentence,” he says, “and I’ll give you my distributor.”

The lead agent and his partner glance at each other. Here it is: a chance to nail the slippery kingpin who runs a multi-million dollar heroin ring that covers three states, but who has somehow managed to elude capture again and again. Never mind that coincidentally their case-closure rate will skyrocket, making them look good. There is a brief pause as the lead agent again glances at his partner, then back at our suspect.

“Done,” he states, closing the deal.

Fiction, you say? The oft-repeated storyline to the take-your-pick selection of seemingly endless TV crime dramas?

You might think so, and you’d be right. But in the daily trenches of law enforcement, this scenario is not as far-fetched as it appears. In fact, wheeling and dealing is more of a way of life than many police officers and prosecutors care to openly admit. It is, quite simply, the practice of using snitches to obtain convictions. [See: *PLN*, June 2010, p.1; Feb. 2006, p.28].

But wait, you say. What about the old saying, “snitches get stitches?” Don’t rats end up at the bottom of the nearest river? If that’s true, then the river bottom is a very crowded place.

Nationwide, court records indicate that 25% of offenders sent to federal prison for drug-related crimes provided information to prosecutors in exchange for shorter sentences. In some jurisdictions, like Idaho, Colorado and the Eastern District of Kentucky, more than half did. Sometimes these sentence reductions can amount to 50% or more, according to the U.S. Sentencing Commission.

Given that incentive, it’s inevitable that some prisoners would find a way to profit from such a dysfunctional system. According to a 2012 *USA Today* investigation that examined hundreds of thousands of court cases, “snitching has become so commonplace that in the past five years at least 48,895 federal convicts – one out of every eight – had their prison sentences reduced in exchange for helping government investigators....”

Citizens who live their lives happily ignorant of the criminal justice system are unaware that it is a closed loop, starting at the top. Judges, many of whom are former prosecutors and who draw their paychecks from the same government that pays the police and prosecution, are generally hesitant to cast doubt on the legitimacy of their brethren’s crime-fighting methods. Further, judge-made case law over the years has upheld the right of the police to use almost any tactic to solve crimes, including lying and the use of informants.

As a result, prosecutors at both the state and federal levels face few checks upon their power. Knowing that jurors fear crime and seek safer neighborhoods, U.S. Attorneys and their local district attorney counterparts gather information to use as

evidence in criminal cases from whomever they can, including prisoners seeking to shorten their sentences.

The incarcerated – and the people who guard them – know there are few secrets in jail or prison. People talk about everything, including their cases. The more canny and opportunistic prisoners realize from firsthand experience that prosecutors “pay” well with sentence reductions for information on someone they have insufficient evidence to convict.

To the naïve or uninitiated, law enforcement, in its battle against crime, should be able to use every tool at its disposal. If that means relying on testimony from one criminal to convict another, so be it. Except in the most obvious cases of prosecutorial overreach, juries hold their collective noses and vote guilty, ignoring misgivings about the source of the incriminating “proof” or the motives of the jailhouse snitch who takes the stand against a defendant.

However, the *USA Today* investigation that examined the culture of snitching questioned the usefulness of such testimony and cast doubt on whether it serves the ends of justice.

Justice, in its purest form, relies on truth – but within the snitching community, truth is a rare commodity and can be the first casualty in a system that seems more interested in obtaining convictions than dispensing justice. Prosecutors eager to close a case often reward criminals with sentence reductions for inaccurate, manufactured or questionable “evidence” or testimony against another offender.

## AFFORDABLE INMATE CALLING SERVICES

*Keeping you Connected while saving you Money!*

**NO hidden fees. One flat monthly rate • NO setup fee with referral information  
NO charges to add/ remove numbers • NO transfer fees • 100% BOP Compliant!**

**2 vanity numbers for \$15 + tax /month, additional # for \$1.50 each**

**Ask us about our REFERRAL PROGRAM!**

**Contact Us:**

**Inmates: inmates@aicsllc.net • 303-214-0097**

**Families: www.aicsllc.net • billing@aicsllc.net • 866-645-9593**



The case of federal prisoner Marcus Watkins is one example of the unintended consequences of the institutionalized culture of snitching. According to *USA Today*, "For a fee, [Watkins] and his associates on the outside sold ... information about other criminals that they could turn around and offer up to federal agents in hopes of shaving years off their prison sentences."

Watkins' case is not the only one of its kind, but certainly one of the most documented. His outside associates collected and offered to sell information about the drug trade to fellow prisoners at the Atlanta City Detention Center, most of whom had the money, and incentive, to pay for it. And they were not the only customers; according to Watkins, "the biggest buyer of information is the government." Only the currency was different. "They pay in years," Watkins said, claiming that federal agents he spoke with "knew money's been changing hands. They basically authorized all of this."

Robert McBurney, a former federal prosecutor from Atlanta, called it "a pernicious situation that sadly, undid some good works," but FBI agent Mile Brosas testified under oath that agents acted "just based on

the names that Mr. Watkins gave us." At the time Watkins provided the information and names referred to by Brosas, he had already been behind bars for some time. Therefore, the logical assumption would have been that he was receiving his information from outside the prison – though that did not deter the prosecutors who relied on that information in other criminal cases.

The court was not amused. The then-chief judge of the federal district court in Atlanta, Judge Julie E. Carnes, decried the "abominable situation" of such information peddling, stating she was "appalled that it's going on to the level it appears to be going on."

And Watkins' case is clearly not an isolated example. As noted by Professor Tim Saviello at the John Marshall Law School in Chicago, "People are willing to pay \$20,000 or \$30,000 to get a piece of information. That tells you how valuable it is."

The pressure to snitch is overwhelm-

ing. Suspects accused of federal crimes almost always accept plea bargains. Those who don't are generally convicted at trial, and the lengthier sentences they typically receive for refusing to plead guilty are known as the "trial penalty." For someone in such a position, who may be facing a mandatory minimum prison term of 10 to 20 years, informing on fellow criminals is their only chance at leniency.

The fact remains that most prisoners serving time for drug offenses are not major players in the drug trade. In 1995, the U.S. Sentencing Commission found that only 11% of federal drug trafficking defendants were major traffickers; the rest were lower-level offenders. Even "safety-valve"

**ORDER THE NEW PRISON OFFICIAL CATALOG - ONLY \$10**

**PRISON OFFICIAL**  
WWW.PRISONOFFICIAL.COM

**ISSUE #1 OR ISSUE #2**  
5 FREE HOT MODEL PHOTOS INCLUDED WITH PURCHASE

**INMATES #1 RECOMMENDED**

**CORRECTIONAL FACILITY APPROVED**

**GET MAIL DONT DELAY**

**ORDER THE NEW PEN PAL LIST OF 50 REAL ADDRESSES TO FEMALES WAITING TO CORRESPOND TO PRISONERS**

**RECENT PHOTOS INCLUDED!**

**SEND \$49.95**

Inmates post your profile on our Pen Pal website  
**www.PrisonOfficial.com**  
2 year membership - Send \$30  
250 word limit send S.A.S.E for return of your photo

**Send Facility Checks/Money Orders To:**  
**MUST ADD \$2 S/H TO ALL ORDERS**  
**PRISON OFFICIAL**  
**P.O. BOX 1427**  
**WARRENVILLE IL 60555**

**PRISONER ASSISTANT**  
REHABILITATION AND REENTRY PLANNING

**Join Our Exclusive Membership, Open a Bank Account and Gain Access to Our Services!** **MEMBERS ONLY**  
We provide full services to our membership clients.

**A Bank Account under your social security number is the only way to build a positive banking history.** Deposits, Statements, Money Orders, Bank Checks, **BANKING & FINANCE**

**Prisoner Concierge** Internet Purchases, Gift Cards, Current Events, People Search, Personal Shopper and much more. "If It Can Be Done, We Will Try To Do It"

We can do any Graphic Design project. Printed Material, Musical Emails, Creative Writing, Photo Reproduction & Forwarding, Book Publishing, Book Cover Design, Press Releases, Portfolio Creation, and Website Design. **GRAPHIC**

**Virtual Office** Mailboxes, Emails, Texts, Scanning, Copies, Typing, Storage, Document Preparation, Internet Research, Prepaid, Contract & Computer Aided Phones.

Place your profile on [prisonerassistant.com](http://prisonerassistant.com) and access our Special Features; Classifieds, Portfolios, Posts & Blogs, Market Place and Sponsor a Prisoner. **social content media**

PO Box 704-AD1  
Lake Harmony, PA 18624-0704  
[www.prisonerassistant.com](http://www.prisonerassistant.com)  
[info@prisonerassistant.com](mailto:info@prisonerassistant.com)  
(570) 722-5800

For more information - send \$4.50 to "Prisoner Assistant" for an Application Package and 80 page color catalog. If you send an SASE you will only receive a brochure. **NO PERSONAL CHECKS ACCEPTED**

**Business Development** **JOIN NOW!** **Credit Development**

**The services below are available to all prisoners - not just our clients!**

**On Demand Services** **PRISONER ASSISTANT NOW OFFERS SELECT SERVICES TO ALL PRISONERS! NO MEMBERSHIP NECESSARY!**

**SEND AN SASE FOR OUR ON DEMAND BROCHURE**

**Banking and Financial Management Course**  
120 pages, complete course with 8 chapters and exams. Transcript and Certificate available. Send \$30.00 to Prisoner Assistant at the address above with a request for the course. Open to Everyone.

**Personal Reentry Guide and Journal**  
233 pages, complete course with 7 chapters and exams. Transcript and Certificate available. Send \$35.00 to Prisoner Assistant at the address above with a request for the course. Open to Everyone.

**NO PERSONAL CHECKS ACCEPTED**

## Snitching Reduces Sentences (cont.)

modifications to the mandatory minimum sentencing guidelines did little to reduce the explosion in the number of prisoners convicted of drug crimes. Such offenders are under pressure to offer “substantial assistance” to the government, often in the form of information about other drug dealers, as a means of obtaining sentencing relief. During the past five years, fully one-third of drug traffickers sentenced in federal court received sentence reductions for providing “substantial assistance.”

Drug conspiracy laws enacted in 1988 also contributed to the influx of federal drug offenders, allowing the government to win convictions for what prisoners often term “ghost drugs,” by swearing that any information provided was about a suspect who was part of the snitch’s drug ring. Unfortunately, such a system can snare innocent bystanders – defendants who become the victims of lies told by their codefendants who have figured out how to manipulate the sentencing laws in order to reduce their own prison terms.

One of the most egregious examples of misuse of the justice system by both police and prosecutors occurred in Louisiana, where the Colomb family suffered years of prosecution, imprisonment and economic disaster that began with a minor drug possession charge against the teenaged

son of Ann Colomb, the family matriarch. According to court filings, prosecutors claimed that Colomb and her sons, living on a mostly black street in a white section of the town of Church Point, Louisiana, ran a \$70 million drug operation.

The trouble started when two of Colomb’s sons, Sammie and Edward, pleaded no contest to felony possession and received probation. Church Point, like many southern towns, suffered from documented racial tensions, heightened by the fact that another Colomb son, Danny, dated a white woman. According to Rodney Baum, the Colomb family lawyer, “They took a bunch of unrelated police harassments of these people over 10 years, coupled it with a parade of jailhouse snitches.... It was ridiculous.” The federal prosecutor, U.S. Attorney Bret Grayson, used more than 30 imprisoned informants to compile his evidence of a drug conspiracy.

As the case neared trial, U.S. District Court Judge Tucker Melancon began having misgivings and sought to bar many of the informants from testifying. The case, despite being already weakened by a lack of hard evidence and the fact that Colomb family members had continued to work construction and oilfield jobs while supposedly netting millions in the illicit drug trade, moved forward. The jury convicted the family in 2006 and they went to prison.

Then another convicted federal prisoner, Quinn Alex, in a letter to his former prosecutor, revealed the scope and details of a snitching-for-hire scheme at the Federal Correctional Institution in Three Rivers, Texas, the source of the information used by U.S. Attorney Grayson in the Colomb case. A motion for a new trial soon followed, and Judge Melancon vacated the convictions

and freed the family.

The Colombes were “fortunate,” as they were released from prison and justice prevailed. But under any definition of justice they shouldn’t have been convicted in the first place, and the case vividly demonstrated the unintended consequences of the snitching industry that is firmly entrenched in the U.S. justice system. Ann Colomb expressed it best: “What happened to us should never happen to anyone. It breaks my heart....”

But the real victim is justice itself, in the form of wrongful convictions, official corruption, public deception and the weakened legitimacy of the criminal justice system in the eyes of the public. The use of snitches has become so prevalent that the practice and its damaging effects are the subject of a book, *Snitching: Criminal Informants and the Erosion of American Justice*, by Alexandra Natapoff, published in April 2011.

Under such scrutiny the practice of snitching, spurred by harsh sentencing laws and win-at-any-cost prosecutors, might gradually fade. Snitching has already faced a backlash due to a controversial DVD series called “Stop Snitching,” created by Ronnie Thomas, a Baltimore resident also known as Skinny Suge. The first video was released in 2004 and a sequel followed in 2007; Baltimore police have called the DVDs a form of witness intimidation.

Suge is now serving a 19-year federal prison term. In an ironic twist of fate, his 14-year-old son, Najee Thomas, was murdered in April 2014, shot in the head as he sat inside his home in the Cherry Hill section of Baltimore. Police have not said whether Najee’s death was related to his father’s violent past, but blame the DVDs for a declining case-closure rate. They say the “Stop Snitching” videos have created an increasing unwillingness by members of the public to come forward with crime tips.

The police asked for the public’s help in solving Najee Thomas’ murder, but thus far no arrests have been made.

Perhaps a TV crime drama might not be the best setting for a discussion of the culture of snitching in our nation’s criminal justice system. A more appropriate venue might be a game show – for example, “Let’s Make a Deal.” ■

Sources: [www.usatoday.com](http://www.usatoday.com), [www.pbs.org](http://www.pbs.org), <http://gritsforbreakfast.blogspot.com>, [www.reason.com](http://www.reason.com), <http://baltimore.cbslocal.com>, [www.thecrimereport.org](http://www.thecrimereport.org)

**Corcoran Sun**  
Full Color Prison Yard Monthly  
News ♦ Entertainment ♦ Resources  
**3 Month Special Subscription**  
**\$5 or 20 FCS Stamps**  
**NOW 20 PAGES**  
Expanded full color format with exciting episodes of thrilling novels and sexy pics. Many how-to articles on writing, art, music and health. Filled with entertainment: puzzles, trivia, jokes, poetry... Submit your writing, art, poetry etc. See your submission, name and contact info in print.  
Special 6-Issue Subscription (\$10 or 40 FCS stamps)  
Special Year Subscription (\$20 or 80 FCS stamps)  
NEW Books/Sheets/Strips ONLY No singles on special please  
**Freebird Publishers**  
Box 541, North Dighton, MA 02764  
[www.FreebirdPublishers.com](http://www.FreebirdPublishers.com)  
[Diane@FreebirdPublishers.com](mailto:Diane@FreebirdPublishers.com)



## TEXAS ONLY

Post-conviction State and  
Federal Habeas Corpus  
Parole Representation  
Family Law

### Ashley Burleson

Attorney and Counselor at Law  
1001 Texas Avenue, Suite 1400  
Houston, Texas 77002



# CHEAP LOCAL FEDERAL CALLS

*Get a local Number & Save up to 85% on Prison Calls with Sentel.*

*Save on International Calls with Sentel*

Below is a summary of the Great plans we offer:

ECONOMY PLAN (USA)	MEXICO PLAN	DOMINICAN REPUBLIC PLAN	USA & INTERNATIONAL
<b>Features:</b>  Price: <b>\$14.99</b> 400 Minutes Additional lines @ \$2.0 Additional Mins @ 5cents Best up to 4lines Monthly	<b>Features:</b>  Price: <b>\$34.99</b> 300 Minutes Additional Minutes @ 12 cents Add a line for \$2.5	<b>Features:</b>  Price: <b>\$39.99</b> 300 Minutes Additional Minutes @ 12.5 cents Add a line for \$2.5	<b>Features:</b>  Price for 1 <sup>st</sup> line: <b>\$1</b> Add a line: 50 cents Rates Based Upon Destination 6cents for USA Calls as low as 10 cents for INTER Guaranteed lowest rates Great for Multiple Lines

# LLAMADAS FEDERALES LOCALES BARATAS

Obtenga un número local de la prision y ahorre hasta un 85% en llamadas con Sentel.

*Ahorre en llamadas internacionales con Sentel*

A continuación se muestra un resumen de los Grandes planes que ofrecemos:

PLAN ECONOMICO (EE.UU.)	PLAN PARA MEJICO	REPÚBLICA DOMINICANA PLAN	EE.UU. E INTERNACIONAL
<b>Incluye:</b>  Precio: <b>\$ 14.99</b> 400 Minutos líneas adicionales @ \$ 2 Minutos adicionales @ 5cents Bueno hasta 4lines mensuales	<b>Incluye:</b>  Precio: <b>\$ 34.99</b> 300 Minutos Minutos adicionales @ 12 cents Agregue una línea por solo \$ 2.5	<b>Incluye:</b>  Precio: <b>\$ 39.99</b> 300 Minutos Centavos adicionales Minutes@12.5 cents Agregar una línea por solo \$ 2.5	<b>Incluye:</b> <b>Precio para 1<sup>a</sup> línea: \$ 1</b> Agregue una línea: 50 cents Precios basados en la Destino 6cents para EE.UU. Las llamadas internacionales por solo 10 centavos los mejores precios garantizado Excelente para múltiples líneas

**We accept debit and credit card payments, institutional checks, bank deposits and paypal**

Sentel, Sentel  
 9550 S. Eastern Ave Ste 253  
 Las Vegas, NV 89123  
 Ph: 702-430-9445  
 Email: [sentel.nv@gmail.com](mailto:sentel.nv@gmail.com)  
 Website: [www.sentelinmatecall.com](http://www.sentelinmatecall.com)

**Note : Please do not send any inquiries by mail. Mail is only for orders and payments.**

# New York Judge Unseals Attica Prison Riot Records – Sort of

by Joe Watson

**A** NEW YORK STATE JUDGE HAS ORDERED the release of hundreds of pages of documents related to the investigation of the 1971 riot at the Attica Correctional Facility, but not before striking enough information from the records as to make them meaningless – despite pleas from state Attorney General Eric Schneiderman that it is time to give closures to families and victims of the uprising and its bloody aftermath.

The documents in question are volumes II and III of the Meyer Commission Report, which contain grand jury testimony related to the retaking of Attica by the New York State Police and prison guards. The commission was appointed by then-Governor Hugh Carey and headed by state court judge Bernard S. Meyer. Thirty-two prisoners and 11 guards were killed during the rebellion and scores were wounded, many critically.

The 570-page report, issued in 1975, concluded that while 62 prisoners had been indicted on various charges following the riot, a grand jury also should have considered charges against law enforcement officers. Only one state trooper was indicted by the grand jury – for reckless endangerment.

The commission stressed, however, that there were “important omissions” in evidence obtained by the New York State Police, as well as a potential conflict of interest in troopers investigating fellow officers who retook the prison. The commission faulted police for their takeover strategy and the

resulting bloodshed, in which 29 prisoners and 10 guards being held hostage were fatally shot when officers stormed the facility.

After a full year of considering arguments on the issue, Erie County Supreme Court Judge Patrick H. NeMoyer ruled on April 24, 2014 that the Meyer Commission Report could be unsealed, but only after all names in the report were fully redacted and all evidence presented at the grand jury proceedings had been removed.

The decision essentially means that any information about who did the shooting when Attica was retaken on September 13, 1971, and anything learned from the grand jury’s investigation, will remain cloaked in secrecy. The retaking of the prison occurred after state officials refused to grant amnesty from criminal prosecution to prisoners who took part in the uprising.

The Meyer Commission Report was only produced after state prosecutor Malcolm Bell turned whistleblower in 1975 and alleged that not only had major crimes been committed by some state troopers and prison guards who retook the facility, but that in the aftermath, top state officials covered up abuses. Those abuses included police officers indiscriminately shooting prisoners, and savagely beating and torturing them.

NeMoyer’s ruling was an apparent victory for the New York State Police and the police union, which had both argued against releasing the remaining volumes of the Meyer Commission Report. Lavonne Williams, the widow of former State Police Col. Henry Williams, who had directed the assault to retake Attica upon the order of then-Governor Nelson Rockefeller, also objected to the release of the records.

When he finally agreed to petition the court to unseal the documents, Attorney General Schneiderman said the report would provide answers that have eluded victims and their families for the past 43 years.

“It is important, both for families directly affected and for future generations, that these historical documents be made available so the public can have a better understanding of what happened and how

we can prevent future tragedies,” he said. “The time has come to bring transparency to one of New York State government’s darkest chapters.”

A group called the Forgotten Victims of Attica, made up of prison employees who survived the riot and families of those who died, had pushed the state for years to unseal the remaining volumes of the Meyer Commission Report.

“For families that lost their father, son, brother because they were killed in D Yard, they yearn to know the truth of how their loved one died and why they died,” said Gary Morton, an attorney representing the victims’ group. “Some of that has come out, but certainly there’s a lot more that hasn’t come out.”

In 1976, then-Governor Carey pardoned seven prisoners and exempted 20 troopers and prison guards – among the hundreds who seized control of Attica – from disciplinary action. He also commuted the death sentence of prisoner John Hill, who was convicted of beating Attica guard William “Billy” Quinn to death during the four-day riot.

In 2000, 25 years after the Meyer Commission Report was issued, the state reached a \$12 million settlement with 502 former prisoners and families of those killed or injured who claimed they had been beaten, tortured and denied medical treatment after the riot. [See: *PLN*, June 2000, p.12]. Five years later, the state agreed to pay \$12 million to settle claims filed by surviving prison employees and their family members. [See: *PLN*, Nov. 2005, p.33].

Some historians have termed the retaking of Attica “one of the bloodiest confrontations between the state and its citizenry in American history.” [See: *PLN*, Nov. 1997, p.19; Oct. 1996, p.12; Sept. 1991, p.1].

“With the exception of Indian massacres in the late 19th century, the State Police assault which ended the four-day prison uprising was the bloodiest one-day encounter between Americans since the Civil War,” wrote the New York State Special Commission on Attica.

In a separate and seemingly coinci-

## WISDOM IS THE KEY TO SUCCESS Get Wise; Get a SMITH'S GUIDE™

### SMITH'S GUIDE to Executive Clemency for State and Federal Prisoners

For those who have exhausted all legal remedies or have sentences that are too long to serve, this book lays out every aspect of the clemency process. [288 pages]

### SMITH'S GUIDE to Chapter 7 Bankruptcy for Prisoners (June 2014)

Get immediate freedom from liens against offender account by filing chapter 7 bankruptcy. Includes required bankruptcy forms and detailed filing instructions.

\$24.95 + \$6.95 shipping/handling (in CA, include additional sales tax of \$2.18) for each book. Please specify book(s) ordered. Sent via USPS media mail. Money orders, personal checks or institutional checks ONLY. Send name, address and DOC/BOP number, with payment of \$31.90 (in CA, \$34.08) per book, payable to Roberts Company:

Roberts Company, 15412 Electronic Lane #101  
Huntington Beach, CA 92649  
Also available on Amazon.com

dental decision, officials who manage the New York State Museum announced in May 2014 that they were removing from public view a cache of over 2,000 artifacts recovered following the riot so that family members, researchers and the general public would no longer be able to see them.

The items surfaced in 2012, discovered in a steel storage structure owned by New York State Police Troop A in Batavia, New York.

Among the objects that had been stored for four decades were personal letters to prisoners from their children, hundreds of photographs recovered by troopers from the cells of slain prisoners, notebooks containing stories of prison life at Attica and copies of prisoners' legal records.

There were also bloody clothes, including the shirt and pants belonging to prisoner spokesman Elliott L.D. Barkley, who some insist was executed after police retook the prison, as well as baseball bats recovered from the recreation yard. The artifacts also included items that belonged to guards who were killed during the riot, such as hats, badges and a wallet containing personal photos.

In making the announcement to close off access to these items, the museum said it would rely on "officials with the state corrections department and State Police to help inventory the artifacts." In other words, the agencies in charge of the bloodbath that resulted from storming the prison will now be responsible for deciding what the public can – and cannot – see.

Apparently, the saying "History is written by the victors," widely attributed to Winston Churchill, remains true.

The history of what caused the Attica rebellion, however, cannot be rewritten; the causes included overcrowding, poor conditions of confinement, racial tensions between the mostly black prisoners and all-white prison guards, and the refusal by prison officials to address those serious concerns. The Attica uprising occurred two weeks after the murder of political prisoner George Jackson by guards at the San Quentin State Prison in California. 📖

Sources: [www.npr.org](http://www.npr.org), [www.democratand-chronicle.com](http://www.democratand-chronicle.com), [The Washington Post](http://The Washington Post), [www.nonprofitquarterly.org](http://www.nonprofitquarterly.org), [www.lifeofthelaw.org](http://www.lifeofthelaw.org), [www.salon.com](http://www.salon.com), [www.nydailyrecord.com](http://www.nydailyrecord.com)



**STRENGTH STACK 52**

**114 BODYWEIGHT EXERCISE CARDS INSIDE!**

**JUST \$21.95!\***  
(shipping included)

**Experience the Game of Fit!**

Send money orders or institutional checks made payable to:  
Prisoner Assistant  
Po Box 704  
Lake Harmony PA 18624

**Features:**  
-Soft cover book with perforated-card stock for playing cards.  
-Many fitness games available.  
-Effective NEW bodyweight training system.  
-Exercise your entire body with no equipment.

# SPORTZZBUZZ

(pronounced SPORTS-BUZZ!)

THE OFFICIAL PROVIDER OF SPORTS SCORES, LINES, AND MUCH MORE FOR FEDERAL INMATES.

GET UP-TO-DATE SPORTS INFORMATION SENT DIRECTLY TO YOUR CORRLINKS EMAIL FOR ONLY

**\$5 / MONTH\***



ADD [INFO@SPORTZZBUZZ.COM](mailto:INFO@SPORTZZBUZZ.COM) TO YOUR CORRLINKS EMAIL SUBSCRIPTION LIST FOR MORE INFORMATION AND A FREE SAMPLE!  
\*\$5 MONTHLY RATE AVAILABLE ONLY ON 12 MONTH SUBSCRIPTION  
FANTASY FOOTBALL STATS AVAILABLE FOR A SMALL ADDITIONAL FEE

# Selection and Retention Process for Tennessee Appellate Court Judges Challenged

by Christopher McWhorter

IN THE STATE OF TENNESSEE, JUDGES are elected. Before incumbent appellate court judges are placed on the ballot, however, they must be evaluated by the Judicial Performance Evaluation Committee (JPEC), which recommends whether they should be retained or replaced. "Retain" results in a retention election and a yes or

no vote for the candidate, while "replace" means the candidate participates in a contested popular election. This process is part of the state's judicial selection and retention system known as the "Tennessee Plan."

State law requires the JPEC to be comprised of a cross-section of the population. The committee is composed of nine people – three judges, three attorneys and three non-attorneys – from different regions of the state. The JPEC members are also required to "approximate the population of the state with respect to race and gender," pursuant to T.C.A. § 17-4-201(b)(6).

According to a 2010 census, Tennessee's population is 52% female and 22.4% non-white; however, the JPEC includes only two women and one non-white member.

Well-known and relentless Nashville attorney John Jay Hooker, who has filed numerous challenges to the Tennessee Plan, sued Lt. Governor Ron Ramsey, House Speaker Beth Harwell and members of the JPEC in 2013 over the apparent statutory violations related to the JPEC's membership.

Hooker alleged that the composition of the JPEC violated state law because it was not representative of the female and minority population of the state. On January 15, 2014, Davidson County Circuit Court Judge Hamilton Gayden agreed.

"This Court concludes that the composition of the current Judicial Performance Evaluation Commission is *invalid ab initio* under Tenn. Code Ann. 17-4-201(b)(6) and is discriminatory against the female and black population of the State of Tennessee in violation of the Equal Protection and Due Process Clauses of both the United States and Tennessee Constitutions," he ruled.

Regardless, just two days after Judge Gayden's decision, the JPEC met to conduct business as usual. Ultimately, the commission issued recommendations to retain all 22 incumbent appellate court judges whose terms were ending, who were subsequently placed on the August 7, 2014 ballot.

The state appealed Judge Gayden's ruling and Hooker requested that the entire Tennessee Supreme Court recuse itself due

to a conflict of interest, as Supreme Court justices are subject to the Tennessee Plan and the JPEC's retention recommendations. All but one justice agreed; Justice Janice Holder declined to recuse herself because she will be retiring. In June 2014, Governor Bill Haslam appointed a special Supreme Court panel to hear Hooker's appeal, and a decision in that case remains pending.

In a separate lawsuit filed by Hooker challenging the Tennessee Plan, including the way appellate court judges are initially selected by a nominating committee, a special Supreme Court panel ruled in March 2014 that the "retention election portion of the Tennessee Plan satisfies the constitutional requirement that the judges of the appellate courts be elected by the qualified voters of the State and does not violate the Tennessee Constitution." See: *Hooker v. Haslam*, 2014 Tenn. LEXIS 195 (Tenn. Mar. 17, 2014).

The legislature decided in April 2014 to hold a joint Judiciary Committee hearing on whether the JPEC was in violation of the state constitution by failing to meet diversity requirements, as argued by Hooker. According to the *Tennessean*, state Rep. Judd Matheny "warned that if the commission was found to be unlawfully seated, then the judicial appointments it made and the rulings of those judges could be called into question as 'fruits of the poisonous tree.'"

Then again, as the special Supreme Court panel noted in *Hooker v. Haslam*, even if the state's judicial selection process was invalidated, that would not automatically invalidate the acts of the judges who were improperly elected to office.

Meanwhile, the JPEC is no longer in existence as its statutory authority expired on June 30, 2014. A ballot measure to amend Tennessee's constitution to modify the state's selection and retention process for appellate court judges is on the November 2014 ballot. The measure retains much of the prior existing system, but would include increased participation – and influence – by the state legislature. ■

Sources: *Tennessean*, [www.tnreport.com](http://www.tnreport.com), [www.tsc.state.tn.us](http://www.tsc.state.tn.us), [www.ballotpedia.org](http://www.ballotpedia.org)

## Federal Writs

• • •

## Texas Parole

• • •

## Texas Writs

We will fight endlessly for your rights and to secure your freedom.

Time is of the essence for many remedies, so please contact our office today.

You do not have to accept this. You CAN keep fighting.

Is your freedom worth it?

Surprisingly affordable.

Law Office of

**David Rushing**  
723 Main St. Ste. 816  
Houston, TX 77002  
713-877-1300

ADVERTISEMENT



# New Report Cites Fewer HIV-Positive State and Federal Prisoners

by Matt Clarke

A RECENT STUDY REVEALED THAT THE number of HIV-positive prisoners in both state and federal facilities nationwide is declining and, for the first time, the AIDS mortality rate for prisoners has fallen below the national average among the general population. The findings, presented in a Bureau of Justice Statistics report published by the U.S. Department of Justice, reflect a significant drop in the number of AIDS-related prisoner deaths.

The report, "HIV in Prisons, 2001-2010," documents a 10-year, 16 percent decline in the rate of HIV infections in state and federal prisons – from 194 per 10,000 prisoners at the end of 2001 to 146 per 10,000 at the end of 2010.

The reduction in AIDS-related deaths was even more dramatic, falling an average 16 percent per year among the states that reported such deaths during the same ten-year period. The study cited a drop in the rate of AIDS-related prisoner deaths from 24 per 100,000 population in 2001 to only five per 100,000 in 2010.

The steep decline means that in 2009, the AIDS mortality rate among state prisoners – six per 100,000 – fell below the rate in the general population – seven per 100,000 – for the first time.

The decrease is even more significant

considering that at the end of 2001, the AIDS-related death rate among prisoners age 15 to 54 was about triple that of the general population.

"Rates of HIV/AIDS cases and AIDS-related deaths declined across all sizes of prison populations," the report stated. The reduction was greatest in large prisons (19 percent), followed by medium-sized prisons (17 percent) and small facilities (12 percent).

The study found that declines in AIDS-related deaths crossed both age and racial lines: "AIDS-related deaths in state prisons declined from 89 in 2009 to 69 in 2010 among males, from 70 to 43 among black non-Hispanics, and from 87 to 60 among all state inmates age 35 or older," the report noted.

New York led the list of states with the most HIV-positive prisoners, with 3,080 at the end of 2010. Florida was second with 2,920 and Texas third with 2,394. Combined, the three states held around 45% of the nation's HIV-positive state prisoners.

As of the end of 2010, just over 20,000 state and federal prisoners were reported to be HIV-positive, comprising 1.5 percent of the total prison population.

While the issue of HIV in the prison setting is improving in the U.S., it remains a serious problem in other countries – par-

ticularly those in Asia and Africa.

The United Nations' Office on Drugs and Crime recommends a "comprehensive strategy" to combat the problem of HIV among prisoners, addressing issues such as prison overcrowding, prisoner health care, staff awareness and training, and providing prisoners with "information, means of prevention, counseling and drug dependence treatment ... and rehabilitation opportunities," with special attention given to those at risk of infection, including "the mentally ill, juveniles, women, foreigners and those belonging to ethnic and other minorities."

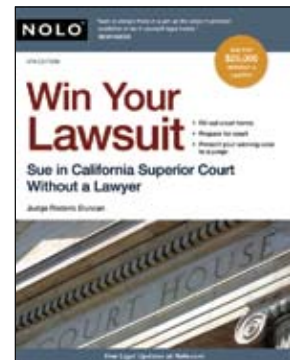
The U.N. agency, which produced the "HIV in Prisons: Situation and Needs Assessment Toolkit," stresses that the overall objective should be "to ensure that every prisoner has access to essential HIV/AIDS prevention, treatment and care services."

Sources: "HIV in Prisons, 2001-2010," Bureau of Justice Statistics, NCJ238877 (Sept. 2012), available online at [www.bjs.gov](http://www.bjs.gov); [www.unodc.org](http://www.unodc.org)

## Calling for Essays by Incarcerated Americans, Prison Workers, and Prison Volunteers

The American Prison Writing Archive (APWA) is an internet-based, non-profit archive of first-hand testimony to the living and working conditions experienced by incarcerated people, prison employees, and prison volunteers. Anyone who lives, works, or volunteers inside American prisons or jails can contribute non-fiction essays, based on first-hand experience: 5,000 word limit (15 double-spaced pages); a signed APWA permission-questionnaire must be included in order to post work on the APWA. All posted work will be accessible to anyone in the world with internet access. For more information and to download the permissions-questionnaire, go to: <http://www.dhinitiative.org/projects/apwa/>, or write to: APWA, 198 College Hill Road, Clinton, NY 13323-1218. Sincerely—The APWA Editors.

 **NOLO**



### Win Your Lawsuit

Sue in California Superior Court  
Without a Lawyer

———— \$39.99 ————

Order from **Prison Legal News**

P.O. Box 1151  
Lake Worth, FL 33460  
561-360-2523

Add \$6 shipping for orders under \$50

[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

# BOP Criticized for Failing to Oversee Healthcare Administrator at FCC Butner

by Derek Gilna

**T**HE FEDERAL BUREAU OF PRISONS (BOP) is facing criticism for its apparent failure to adequately oversee a Florida-based company responsible for coordinating the payment of BOP bills for prisoner medical care in North Carolina.

Before it went into receivership, MDI Holdings, Inc. of Ponte Verde Beach, Florida was a health care technology and analysis company that administered medical care for some 5,000 prisoners at the Federal Correctional Complex in Butner, North Carolina. The BOP's contract with MDI was the company's largest; the actual medical care at Butner was subcontracted to Duke University Health Center and a number of private practitioners.

MDI was successful for a number of years. Sales in 2009 reached \$97 million, for example. But shortly thereafter the firm experienced a series of events that culminated in the expiration of its contract with the BOP in July 2012. When that contract was not renewed, the financial house of cards holding the company together collapsed.

The court-appointed receiver tasked with cleaning up the mess was Ronald Winters, a managing director with the Alvarez & Marsal Healthcare Industry Group in New York. The main challenge that Winters faced was repaying a \$30 million loan that MDI had obtained from Wells Fargo & Company.

"We tried to make sure that nobody would become worse off than they were when we got here," Winters said. "In a difficult situation, we think we achieved a favorable outcome."

However, that "favorable outcome" did not include settling any debts incurred by MDI prior to Winters' appointment in September 2012. Those unpaid debts included amounts due to the Duke University Health System, which was owed about \$8.3 million, and to various North Carolina doctors who performed medical services at FCC Butner, which includes the Federal Medical Center that houses prisoners who are elderly, ill or infirm.

Those health care professionals felt that the BOP should share responsibility for the millions of dollars still owed to them after MDI's collapse.

"Who provides services to the U.S. government and worries they're not going to get paid?" asked Douglas Holmes, owner of ENT and Audiology Associates in Raleigh, North Carolina, whose small office is owed almost \$30,000 for prisoner medical care.

"Someone in the Bureau of Prisons surely knew [MDI officials] weren't doing things properly but they didn't tell us, and continued to send MDI payments" that should have gone directly to providers such as himself, he said.

Holmes' claims and others are under investigation by the North Carolina Medical Society. Society Associate General Counsel Conor Brackett said Freedom of Information Act requests have been filed with the BOP in an effort to determine the agency's responsibility for the unpaid medical bills.

"What we would like to understand a little more about what that oversight was like, meaning ... the Bureau of Prison's responsibilities and authority over MDI while the contract was in effect," Brackett said.

Another disgruntled provider, Carolina Vascular Surgery and Diagnostics, is owed nearly \$50,000 by MDI, and also feels that the BOP bears some responsibility for the unpaid bills: "The government paid MDI to process claims and that's all ... they did, process and pay, so they should be [considered] government-backed."

Although the Duke University Health Center and other physicians are once again being paid for current medical services through a new company, Holmes is still not satisfied. "From what I've heard MDI did with the money, I'm wondering why the Department of Justice isn't getting involved and trying to put some of the [MDI] executives in Butner themselves."

MDI founder and former CEO Richard R. Willich, who claimed to be a Vietnam veteran, former Marine Corps reserve officer and law school graduate, was known for a lavish lifestyle that included a working farm and a \$120,000 electric car, paid for with funds loaned to MDI by Wells Fargo, according to allegations in the bank's lawsuit against the company. The *Business Journal* reported that \$1 million worth of

artwork and artifacts had been displayed at the firm's headquarters. Wells Fargo confiscated and sold the artwork, along with furniture and other items in the building, to help satisfy MDI's debt.

MDI also fell prey to a former employee who stole some of its intellectual property rights, which were then used by other companies to undermine the firm. MDI sued John Long-Field Smith and obtained a \$2 million judgment plus attorneys' fees and costs in December 2011, but by then it was too little, too late.

"There was a substantial amount of business damage done to MDI Holdings," stated attorney Mike Freed, who represented the company. He estimated losses in MDI's finances and reputation at greater than \$10 million, though he noted the exact amount was difficult to calculate.

MDI and Wells Fargo had been negotiating a restructuring of the \$30 million loan until March 2012, when the bank demanded full repayment. MDI countered by filing suit because, according to the company's attorney, Geoffrey Heekin, "They weren't ready to surrender just yet."

When the BOP did not renew its contract with MDI for administering healthcare at FCC Butner, the company realized the end was near. It dropped the suit against Wells Fargo and agreed to receivership and liquidation. The liquidation was finalized in early 2013, and the corporation's office building went into foreclosure.

"They made that decision based on the economics of it," said Heekin. "They realized there wasn't much hope." ■

Sources: [www.staugustine.com](http://www.staugustine.com), [www.bizjournals.com](http://www.bizjournals.com)

## Actual Innocence

Explains how the innocent are convicted by faulty eyewitness testimonies, police perjury, expert witnesses, prosecutorial misconduct, etc., and how DNA testing is used to free the innocent.

\$17.99 from PLN's Book Store!  
See page 61 for more information.

# WELCOME TO KRASNIA BABES & KRASNIA STUDS WORLD

TENS OF THOUSANDS OF THE HOTTEST AND MOST SCANDALOUS BABES&DUDES FOUND ON THE PLANET.  
EACH CATALOG PAGE HAS 120 BEAUTIFUL GIRLS OR BOYS POSING JUST FOR YOU!  
ORDER ONE CATALOG PAGE FOR ONLY \$4.50 OR FOR 10 U.S. FOREVER STAMPS WITH AN SASE ENCLOSED.  
WE WILL SEND YOU VOLUME ONE. EACH ADDITIONAL VOLUME THE SAME PRICE!

**HELP US TO HELP YOU!**

WE ARE MORE THAN HAPPY TO ANSWER E-MAIL INQUIRES HOWEVER, DUE TO MAILING COST AT \$0.46 CENTS A LETTER, PLEASE ENCLOSE AN SASE WITH YOUR QUESTIONS, OTHERWISE NO REPLIES!

**WHAT ABOUT OUR PRICES AND POLICIES**

COLOR PRINTS ON 4x6 GLOSSY PHOTO PAPER AS LOW AS \$0.35 CENTS PER PRINT ON ORDERS OVER 500 SHIPPED ACCORDING TO POLICY: 25 PICTURES PER ENVELOPE EVERY 24 HOURS. S&H \$2.00 PER ENVELOPE.

**METHOD OF PAYMENT/CONTACT INFORMATION**

U.S. POSTAL SERVICE MONEY ORDERS-STATE & FEDERAL CORRECTIONAL INSTITUTIONAL CHECKS

**PAYABLE ONLY TO: KRASNIA L.L.C.**

EQUATION FOR FIRST CLASS U.S. FOREVER STAMPS

BRAND NEW FLAT BOOK FOR ALL ORDERS AT THE RATE OF \$6.00 PER FLAT BOOK.

WE RESPOND TO OUR CLIENTS NEEDS AND TRY TO HELP THE BEST WE CAN.

**OUR SEASONAL SPECIALS MEAN A KICKOFF OF SAVINGS!**

**COLOR CATALOG DISCOUNT SALE**  
ONE COLOR CATALOG OF 120 BABES  
IN CLASSIC OR NUDE LINES \$4.50

PLEASE INCLUDE

A SELF-ADDRESSED STAMPED  
(2-FIRST CLASS STAMPS) ENVELOPE.

**QUANTITY BUYS:**

5-14 CATALOGS =10% OFF OUR REGULAR PRICE  
15 CATALOGS =15% OFF OUR REGULAR PRICE  
20 CATALOGS =20% OFF OUR REGULAR PRICE  
25 CATALOGS =25% OFF OUR REGULAR PRICE  
30 CATALOGS =30% OFF OUR REGULAR PRICE  
35 CATALOGS =35% OFF OUR REGULAR PRICE  
40 CATALOGS =40% OFF OUR REGULAR PRICE  
45 CATALOGS =45% OFF OUR REGULAR PRICE  
50 CATALOGS =50% OFF OUR REGULAR PRICE  
BE SURE TO SPECIFY CLASSIC OR NUDE BABES!

160 VOL. OF KRASNIA BABES CLASSIC LINE  
160 VOLUMES OF KRASNIA BABES NUDE LINE

**\$24.95 S&H FREE**  
**FOR GRAB BAG OF**  
**50 PHOTOS**

FROM ALL OUR CATALOGS  
SPECIFY RACE AND MAIN  
AREA OF YOUR INTERESTS  
WE WILL PICK SELECTION  
FOR YOU  
BONUS 1 COLOR CATALOG  
PAGE OF 120 BABES

**LOOSE STAMPS FOR LOOSE BABES**

KRASNYA LOOSE STAMP GRAB BAG SPECIAL  
10 LOOSE BABES.....30 STAMPS  
25 LOOSE BABES.....75 STAMPS  
50 LOOSE BABES.....150 STAMPS  
ALL STAMPS MUST BE 1ST CLASS STAMPS  
IN LIKE NEW CONDITION!

SPECIFY NUDE OR BOP-SAFE (NO VISIBLE NUDITY)  
WE WILL PICK SELECTION FOR YOU

**KRASNYA BABES HAS SPRUNG SALE!**  
FREE SAMPLE CATALOG FROM KRASNIA!

120 BABES IN EACH CATALOG  
ENCLOSE ONE SASE WITH TWO FIRST  
CLASS STAMPS! 1 CAT PER CUSTOMER  
PLEASE SPECIFY MALE OR FEMALE BABES  
NUDE OR BOP-FRIENDLY

3 BRAND NEW FLAT BOOKS OF FOREVER  
STAMPS FOR GRAB BAG OF 45 PHOTOS  
FROM ALL OUR CATALOGS. SPECIFY RACE  
AND MAIN AREA OF YOUR INTERESTS  
WE WILL PICK SELECTION FOR YOU  
BONUS 1 COLOR CATALOG OF 120 BABES  
PLEASE INCLUDE 6 FOREVER STAMPS  
WITH YOUR ORDER FOR S&H

KRASNYA L.L.C.

P.O. BOX 32082

BALTIMORE, MD 21282

EMAIL AND CORRLINKS REQUESTS ACCEPTED AT:  
KRASNABABES@HOTMAIL.COM

WE'D LIKE TO START THE HOLIDAYS RIGHT THIS YEAR!  
THE WAY TO DO THAT IS BY SENDING YOU INCREDIBLE VALUES  
IT'S ONE THING TO TALK THE TALK, ANOTHER TO WALK THE TALK

50 GREAT BABES 0.50 CENTS EACH!—\$25.00  
100 GREAT BABES 0.45 CENTS EACH!—\$45.00  
200 GREAT BABES 0.40 CENTS EACH!—\$80.00  
300 GREAT BABES 0.40 CENTS EACH!—\$120.00  
500 GREAT BABES 0.35 CENTS EACH!—\$175.00

STANDARD TERMS & CONDITIONS APPLY – \$2.00  
PER ENVELOPE (25 PHOTO) FOR SHIPPING AND HANDLING!

**WAIT!**

YOU SAY YOU DON'T HAVE ENOUGH BABE CHOICES  
OR CATALOGS? YOU NEED CATALOGS?  
PREPAY YOUR ORDER AND WE WILL SEND YOU  
FREE COLOR CATALOGS!  
GREAT DEAL, BUT HOW MANY CATALOGS?

FOR EVERY 100 BABES WE'LL SEND YOU  
240 BABES TO CHOOSE FROM!

**ORDER**

50 BABES.....ONE SINGLE CATALOG  
100 BABES.....ONE DOUBLE CATALOG  
200 BABES.....TWO DOUBLE CATALOGS  
300 BABES.....THREE DOUBLE CATALOGS  
500 BABES.....FIVE DOUBLE CATALOGS

KRASNYA IS PROUD TO INTRODUCE AT FANTASTIC INTRODUCTORY PRICES  
THE CONNOISSEUR'S COUTURE "CACHE TWO-FIVE COLLECTION"  
OF INTERNATIONAL ADULT FILM STARS  
TWELVE PACKAGES OF 25 NUDE AND NON-NUDE POSES,  
AVAILABLE ONLY IN OUR "CACHE TWO-FIVE" COLLECTION.

**"CACHE TWO-FIVE"**

"CACHE TWO-FIVE" IS AVAILABLE IN TWELVE (12) SPECIALLY PRICED PACKAGES  
OF 25 POSES IN NUDE AND NON-NUDE POSES.

PLEASE SPECIFY ON YOUR ORDERS IF YOU WANT NUDE OR NON-NUDE PACKAGES  
AND WHAT COLLECTION NUMBER YOU'D LIKE.

COLLECTIONS ARE NUMBERED 01-12 FOR EXAMPLE ON YOUR ORDER YOU'D WRITE:

\*\*\*NUDE CACHE TWO-FIVE PACKAGE 01 & 02\*\*\*

REMEMBER THERE ARE TWELVE (12) COMPLETELY DIFFERENT PACKAGES OF 25 BABES,  
THERE ARE NO DUPLICATES IN ANY OF THE 12 PACKAGES.

600 BEGUILING BEAUTIES, ALL BRAND NEW ADDITIONS TO OUR LINE AND AVAILABLE ONLY  
IN OUR CACHE "TWO-FIVE" PACKAGES! 300 NUDES AND 300 NON-NUDE BEAUTIES  
CAPTURE YOUR OWN COLLECTION OF KRASNIA'S "CACHE TWO-FIVE" SELECTIONS IN  
INDIVIDUALIZED PACKAGING OF 25 RARE AND EXQUISITE BREATH-TAKING BEAUTIES.

THE CONNOISSEUR'S COUTURE COLLECTION OF "CACHE TWO-FIVE" BRINGS YOU

25 BEAUTIES IN EACH "CACHE TWO-FIVE" PACKAGE FOR ONLY \$12.95 PER PACKAGE

**LIMITED TIME SPECIAL \*\*\*\*\* \$59.95\*\*\*\*\***

PLUS S&H FOR 6 "CACHE TWO-FIVE" PACKAGES OF THE NUDE OR NON-NUDE COLLECTIONS  
150 BEAUTIES

IMAGINE 150 OF THESE EXCITING AND EXQUISITE BEAUTIES

FOR A RIDICULOUSLY LOW PRICE OF

\*\*\*\*\*\$59.95\*\*\*\*\* PLUS \$12.00 SHIPPING AND HANDLING CHARGE.

ADD \$2.00 FOR SHIPPING AND HANDLING PER "CACHE TWO-FIVE" PACKAGE ORDERED.

YOU MUST SPECIFY NUDE OR NON-NUDE PACKAGES

IF NOT SPECIFIED NON-NUDE WILL BE SHIPPED AUTOMATICALLY

ALL OF OUR NORMAL POLICIES APPLY

**FOR KRASNIA CLIENTS WHO WORK THE YARDS;  
HAVE WE GOT A GREAT OPPORTUNITY FOR YOU...GRAB BAG**

**MR. HUSTLE GRAB BAG BARGAIN DAYS**

ONLY \$0.25 CENTS PER BABE

5 GRAB BAG MINIMUM PURCHASE REQUIRED

\$2.00 SHIPPING AND HANDLING PER BAG

25 AWESOME BABES PER BAG AT ONLY \$6.25 PER BAG

YOU MUST BUY AT LEAST 5 GRAB BAGS OR 50 GRAB BAGS.

THIS\*\*\*GRAB BAG BARGAIN\*\*\* IS NOT GOING TO BE OFFERED

AGAIN THIS YEAR. **SO STOCK UP NOW!**

AS YOU KNOW YOU GET AN ARRAY OF 25 GORGEOUS BABES

YOU CAN ONLY CHOOSE EITHER MALES OR FEMALES,

ALL NUDES OR BOP SAFE...THE INDIVIDUAL SELECTIONS COME

FROM OUR BEST CATALOGS!!!

YOU MAY WANT TO SIT DOWN FOR THIS BONUS BARGAIN!

OUR BABES CATALOGS SPECIAL OF THE DECADE

— 5 COLOR CATALOGS FOR \$6.00 —

— 10 COLOR CATALOGS FOR \$12.00 —

— 15 COLOR CATALOGS FOR \$18.00 —

— 20 COLOR CATALOGS FOR \$24.00 —

OUR CATALOGS SPECIAL AVAILABLE WHEN YOU PURCHASE

THE 5 GRAB BAG MINIMUM!

THIS PRICE INCLUDES FREE SHIPPING ON THE CATALOGS

BECAUSE OF SHIPPING TERMS ALL CATALOGS SOLD IN

MULTIPLES OF 5 FOR \$6.00 ONLY.

YOU CHOOSE EITHER MALE OR FEMALE CATALOGS

AND IF YOU WANT NUDE OR BOP SAFE!!

## South Florida Landlord Bucks Trend, Offers Housing to Sex Offenders

**L**AWS THAT RESTRICT WHERE SEX OFFENDERS can live when they are released from prison leave many homeless, but one south Florida apartment manager is providing housing opportunities by leasing apartments to offenders on liberal terms.

"I just believe that everybody deserves a second chance," said Pamela Eaton, the manager of Fairfield Apartments in south Fort Myers. She indicated her goal is to help sex offenders become independent and productive citizens, "because everybody makes mistakes." She considers post-release housing one step in that direction.

Restrictive ordinances such as those in Miami-Dade County have made the area virtually off limits to sex offenders, which in the past forced some to live under the Julia Tuttle Causeway bridge. [See: *PLN*, March 2011, p.13; Dec. 2009, p.14; July 2009, p.36; June 2008, p.1].

Residency restrictions in Lee County, which are the same as under Florida state law, prohibit sex offenders convicted of crimes involving minors from living within 1,000 feet of schools, playgrounds, parks or other places where children congregate – leaving few housing options available. Further, many landlords are reluctant to rent to sex offenders, and because they have trouble finding jobs, some are unable to pay rent.

"Other than a small area in Lehigh Acres where there are large, desolate areas that are not within 1,000 feet of where children congregate, which is in the eastern part of the county and away from most jobs, the only option is [Fairfield Apartments] or the woods," said Pam Donelson with the Florida Department of Corrections. "There are a few other very small pockets of desolate residential areas that comply, but they are few and far between."

Pamela Eaton recruits in prisons throughout Florida by offering housing for sex offenders. She often waives the \$200 security deposit for those just released from prison and allows them to owe her the first month's \$450 rent. Most sleep three-to-four in an apartment, sharing a common kitchen and bathroom. Each renter has his own room furnished with a twin bed, TV, dresser and night stand.

Eaton's rental policy has generated

hostility from her neighbors, though that doesn't sway her. Fairfield Apartments is located in a quiet neighborhood where children play and ride bicycles. One resident, Julie Evans, was not afraid to express how she feels about living next to registered sex offenders.

"I got a gun," she said. "And I will use that gun."

But for former prisoners like Clyde Lother, who served 17 years for lewd and indecent assault against a child, Fairfield Apartments saves them from homelessness and possible rearrest for failing to have a permanent address. "I wrote letters [from prison] to places telling them I have no money, I have no income," Luther said. "I wrote letter after letter after letter, place after place after place." He said Eaton was the only one who responded.

She screens potential sex offender tenants to ensure they are non-violent and sincere about changing their lives. Sex offenders, Eaton said, are some of her best renters. "They're really wanting to do right," she stated. "They really are."

In mid-September 2012, there were

22 registered sex offenders housed at the Fairfield Apartments complex and a dozen in surrounding homes.

Some were forced to move, however, when one of the five buildings in the complex was sold to a Canadian couple; the new owners immediately canceled the month-to-month leases of five sex offender tenants.

"We have no place to go," said Steve Bills, one of the renters forced to move. "I mean, this is the only place."

Those who were displaced found housing in the four remaining buildings that Eaton still manages. "I'm here for them," she said. "I'm not just going to let them go without." However, she has only so much space for sex offenders, forcing her to turn away as many as 10 hopeful applicants each week.

As of July 2014, the Florida sex offender registry listed 18 sex offenders living at Fairfield Apartments. There are over 23,000 registered sex offenders in the state. ■

Sources: [www.marcoislandflorida.com](http://www.marcoislandflorida.com), <http://offender.fde.state.fl.us>, [www.northescambria.com](http://www.northescambria.com)

## Massachusetts: Acquittal on Additional Sex Offense Doesn't Trigger Reevaluation of Sex Offender Classification

by Matt Clarke

**O**N SEPTEMBER 11, 2013, THE MASSACHUSETTS Supreme Court held that a prisoner who had been convicted of a sex offense, then given a level three classification by the Sex Offender Registry Board (SORB) due to a more serious pending sex charge, was not automatically entitled to be reclassified following his acquittal on the latter charge.

John Soe, a registered sex offender in Massachusetts, was charged with multiple counts of raping, attempting to rape and committing indecent assault and battery on his 11-year-old stepdaughter. While on bail awaiting trial on those charges, he pleaded guilty to sexually touching the 16-year-old daughter of a friend and was placed on probation.

Following that conviction, the SORB notified Soe of its preliminary decision to

classify him as a level three sex offender – the most dangerous type of offender with the highest risk of reoffending. He requested an administrative review and asked the review to be stayed until the more serious charges involving his stepdaughter were resolved.

The SORB denied the request, considering a previous interview with his stepdaughter and conducted a hearing. Soe's attorney told the board that Soe's lawyer in the criminal case was preserving his Fifth Amendment rights; therefore, he could not testify or present evidence. The hearing examiner found that Soe was a high-risk sex offender and classified him under a level three registration.

The Superior Court affirmed the SORB's decision, and Soe appealed.

The Massachusetts Supreme Court



noted that a sex offender facing a SORB hearing before a trial has taken place on one of the offenses being considered in the hearing has a “difficult” and “strategic” dilemma when choosing between preserving his Fifth Amendment rights and trying to reduce his sex offender classification level, but that alone does not constitute a denial of due process. The board has a public safety interest in obtaining a prompt classification which it has to weigh against an offender’s

Fifth Amendment rights, and pending charges do not provide an automatic right to a stay of the hearing.

Soe also was not entitled to automatic reclassification after he was acquitted on the charges involving his stepdaughter, as he could have been acquitted yet still have committed the crimes. “[W]e also recognize that an acquittal on such charges demonstrates only that the Commonwealth failed to prove the defendant guilty beyond

a reasonable doubt, and is insufficient alone to show that the allegations were false or baseless,” the Supreme Court held.

The board may, on its own or the sex offender’s motion, reconsider a classification; however, Soe had not yet made such a motion. Therefore, the judgment of the Superior Court upholding Soe’s level three sex offender classification was affirmed. See: *Soe v. Sex Offender Registry Board*, 466 Mass. 381, 995 N.E.2d 73 (Mass. 2013). ■

## Fifth Circuit: Prisoner Who was Raped May Proceed with Lawsuit against Lock Company

by Matt Clarke

**I**N A JULY 9, 2013 OPINION, THE FIFTH Circuit Court of Appeals held that the statute of limitations in a federal lawsuit against a manufacturer of cell door locks at a county jail, brought by a former prisoner who was allegedly raped at the facility when he was nineteen years old, did not start to run until he turned twenty-one.

On August 2, 2007, while incarcerated at Mississippi’s Harrison County Adult Detention Center, Aaron Wayne Page, then 19, claimed he was raped by another prisoner who was able to leave his own cell and enter Page’s cell due to faulty door locks. In February 2009, Page filed a lawsuit in federal court. Two years later he amended the complaint to include RR Brink Locking Systems, Inc., the manufacturer of the cell door locks, alleging that the faulty locks made Brink liable for negligence, strict liability and breach of warranty.

Brink filed a motion for summary judgment on the grounds that Mississippi’s three-year statute of limitations period for

personal injury and products liability claims, which controlled in this case, had run before the lawsuit was amended. Although state law provides that the statute of limitations for suits brought by persons under the age of twenty-one at the time of the allegedly tortious incident does not begin to run until the plaintiff turns twenty-one, Brink argued that Page was an emancipated minor because he had been arrested and charged as an adult sixteen times before he turned twenty-one.

The district court denied the motion, holding that being emancipated was distinct and different from the statutory provision related to removing the disability of infancy (i.e., being underage). Brink then filed an interlocutory appeal.

The Fifth Circuit held that Miss. Code Ann. § 15-1-59 provides that the statute of limitations shall not begin until the disability of infancy is removed. Emancipation, as set forth in Miss. Code Ann. § 93-1-65(8)(a), relieves parents of the obligations of parental support, but

does not remove the disability of infancy. The disability of infancy may be removed by decree of a chancery court pursuant to Miss. Ann. Code § 93-19-09, but only with respect to specific transactions related to property, making contracts or entering into a profession or avocation. There is no indication in Mississippi common law that emancipation works as a general removal of the disability of infancy. As state law distinguishes between the two, the statute of limitations did not begin to run until Page turned twenty-one; the judgment of the district court was therefore affirmed. See: *Baker v. RR Brink Locking Systems, Inc.*, 721 F.3d 716 (5th Cir. 2013).

Following remand, the claims against Brink settled in March 2014. The trial court granted in part and denied in part Harrison County’s motion for summary judgment on August 11, 2014, and the county settled 10 days later. See: *Baker v. Harrison County*, U.S.D.C. (S.D. Miss.), Case No. 1:09-cv-00146-LG-JCG. ■

### MARILEE MARSHALL & ASSOCIATES, ATTORNEYS AT LAW

California State Bar Board of Specialization  
**Certified Criminal Law and  
Appellate Law Specialist**

*If you have a California case  
you need a California lawyer!*

(213) 564-1136



**State and Federal Appeals and  
Writs, Lifer Parole Hearings  
and Related Writs**

**31 years of success**

595 East Colorado Blvd

Suite 324

Pasadena, CA 91101

marileemarshallandassociates.com

# Eleventh Circuit Tailors *Turner* for Censorship Claims at Civil Commitment Center

by David M. Reutter

ON SEPTEMBER 23, 2013, THE ELEVENTH Circuit Court of Appeals vacated a summary judgment order that upheld a civil commitment center's policy which limited circulation of a detainee's controversial newsletter among residents at the facility. The appellate ruling also altered the *Turner* standard to strike a balance to reflect differences between civil detention and criminal incarceration.

James R. Pesci is a civil detainee at the Florida Civil Commitment Center (FCCC), which has over 600 residents and is operated under contract by the GEO Group. For some years, Pesci had published a newsletter called "Duck Soup" that was highly critical of the FCCC, its policies and its employees.

To limit circulation of the publication, FCCC director Timothy Budz promulgated a policy in April 2009 that barred all residents from printing or copying Duck Soup. The rationale was that the newsletter disrupted order and discipline at the facility, and had a powerful adverse effect on the FCCC's ability to rehabilitate civil detainees.

In one issue, Pesci described the Florida Department of Children and Families and its contractor, GEO Group, as a "white collared, criminal enterprise." He encouraged residents to hold "collective protests" and "demonstrations," saying they were "cowards" for not doing so. He also made personal attacks on named staff members.

Shortly after Pesci filed his civil rights action, Budz adopted a second, stricter policy in 2010 that characterized Duck Soup as "contraband." In February 2012, the district court granted summary judgment to Budz, holding the 2009 policy was constitutional without addressing the more restrictive 2010 policy.

On appeal, the Eleventh Circuit found the 2010 policy supplanted in every respect the 2009 policy. Due to a number of factors, the Court of Appeals concluded both policies should be considered simultaneously and vacated the district court's summary judgment order.

A central issue was the appropriate legal standard to be used in adjudicating Pesci's First Amendment claims. The ap-

pellate court held that "[a]pplication of the *Turner* [*v. Safely*, 482 U.S. 78 (1987)] standard in the civil detention context must be tailored to reflect that the range of legitimate governmental interests is narrower here than it is in the prison context."

"In short, while there may be shared governmental interests surrounding civil and criminal detention, they are not coextensive," the Eleventh Circuit wrote. "Thus, in the context of this case, the government may not justify a limitation on expressive

freedoms based on retribution or general deterrence," or on "punitive conditions of confinement."

The Court of Appeals held that a rational relation standard, consistent with the limitations set forth in its ruling, was the appropriate standard against which to measure Pesci's First Amendment claims as a civil detainee. The case was remanded for further proceedings and remains pending before the district court. See: *Pesci v. Budz*, 730 F.3d 1291 (11th Cir. 2013). ■

## Transferred Prisoner May Sue Oklahoma Officials in Oregon Court

by Mark Wilson

IN AN OCTOBER 9, 2013 RULING, THE Oregon Court of Appeals held that Oregon courts have personal jurisdiction over Oklahoma prison officials with respect to claims brought by an Oregon prisoner transferred to Oklahoma.

In May 2007, Oregon prison officials transferred Liam O'Neil, aka Jacob Barrett, to the Oklahoma State Penitentiary (OSP) under the Interstate Corrections Compact. Soon thereafter, Barrett sent several letters and grievances to OSP Warden Marty Sirmons concerning his treatment and living conditions at the facility.

Oregon attorney Charles Simmons represented Barrett in several legal actions and regularly communicated with him by letter and telephone while he was confined at OSP.

In August 2008, Simmons sent Barrett legal mail containing attorney-client privileged materials. OSP Case Manager Estes intercepted and read the mail, stating, "This doesn't look legal. I'm confiscating it."

Barrett asked Estes and Sirmons to deliver his legal mail and explain why it had been confiscated. When they did not respond, he filed a grievance.

Simmons had previously verified to Oregon prison officials that he was a licensed attorney who represented Barrett. Nevertheless, Sirmons directed Simmons to explain how the materials he

had sent Barrett were legal mail; provide proof, such as an employment contract, that he was Barrett's attorney; and prove that he was licensed to practice law in Oklahoma. Simmons responded with a 10-page letter and 29 pages of attachments. Barrett was never given or shown the legal mail, however, because Warden Sirmons determined that Simmons had not adequately explained how it constituted legal materials.

Barrett challenged the opening of legal mail outside his presence by Oklahoma prison officials by filing a state habeas petition in Oregon. That case was dismissed, and the dismissal was affirmed on appeal. See: *Barrett v. Williams*, 247 Ore. App 309, 270 P.3d 285 (Or. Ct. App. 2011), *review denied*.

OSP prisoners began threatening Barrett after a guard told several United Aryan Brotherhood (UAB) prisoners that Barrett was a "rat" who was transferred to OSP because he was providing information against "White boys" at an Oregon prison. Guards allegedly plotted with UAB members to have Barrett killed by opening his cell so other prisoners could attack him.

After receiving threatening notes from a UAB prisoner named "Fester," Barrett contacted Oregon prison officials claiming that his life was in danger. He sent copies of the threatening notes, offered to identify

staff members, prisoners and others who could confirm the UAB activities, and requested a transfer.

Oklahoma internal affairs investigators questioned Barrett and OSP officials, but did not interview any other prisoners. Oregon prison officials did not investigate the threats.

Barrett was then assaulted by a UAB member and again requested a transfer; Simmons asked Oregon prison officials to place Barrett in protective custody. Oklahoma prison officials refused to move Barrett or take any other action.

Barrett filed suit in Oregon state court against more than three dozen Oregon and Oklahoma prison officials. He alleged § 1983 claims of retaliation, interference with his legal mail and attorney-client relationship, failure to protect him from known threats and negligence claims under Oregon state law. Barrett sought damages and declaratory and injunctive relief, plus attorney's fees.

After Barrett filed suit, he was transferred to a New Mexico prison. Oklahoma and Oregon officials moved to dismiss the lawsuit for failure to state a claim and lack of personal jurisdiction over the Oklahoma officials. The trial court granted the motions and refused to grant Barrett leave to amend his complaint.

The Oregon Court of Appeals reversed. Noting that Barrett did not challenge the dismissal of any Oklahoma officials except Sirmons and Estes, the appellate court found in a detailed ruling that their interference with Barrett's legal mail was

sufficient to bring them within the personal jurisdiction of Oregon courts. The Court of Appeals also concluded that the trial court had improperly refused "to allow plaintiff his right to file an amended complaint." Finally, although Barrett had been trans-

ferred to New Mexico, his claims were not moot because he had requested monetary damages in addition to injunctive and declaratory relief. See: *O'Neil v. Martin*, 258 Ore. App. 819, 312 P.3d 538 (Or. Ct. App. 2013), *review denied*. ■

## Former New Mexico State Senator Released from Prison

**M**ANNY ARAGON, 66, A FORMER NEW Mexico state Senate leader, was released from federal prison on December 5, 2013. Although most federal prisoners are sent to a halfway house to complete the remainder of their sentence, Aragon was released to home confinement at his house in Albuquerque.

"He's still subject to our rules and regulations and accountability monitoring," said Bureau of Prisons spokesman Chris Burke.

Aragon served three decades in the state legislature, rising to the position of Senate President Pro Tem, and was one of New Mexico's most powerful Democrats. However, his lengthy political career was eclipsed by the sordid details of his downfall: A scandal that involved skimming \$4.4 million from a project to build the Bernalillo County Metropolitan Courthouse. Aragon, who admitted taking \$600,000 from the courthouse project, was one of several defendants prosecuted in the scandal.

He pleaded guilty to federal conspiracy and fraud charges in 2008 and was

sentenced to 67 months in prison, plus a \$750,000 fine and \$649,000 in restitution. He served around 4½ years before being released.

Aragon was also known for flip-flopping on the issue of prison privatization. Initially opposed to private prisons, he changed his mind after being hired as a consultant by Wackenhut Corrections (now the GEO Group) in 1998, while still serving in the state Senate. He later withdrew from his consulting job with Wackenhut after facing criticism for having a conflict of interest. [See: *PLN*, Aug. 2007, p.13; Dec. 1999, p.1].

In spite of his conviction, Aragon continues to receive his state pension of almost \$2,300 per month, and reportedly used those funds to make restitution payments while incarcerated. New Mexico passed a law in 2012 that allows revocation of state pensions when public officials are convicted of felonies, but the law was not made retroactive. ■

Sources: [www.watchdog.org](http://www.watchdog.org), [www.abq-journal.com](http://www.abq-journal.com)



**Serving You with Excellence Since 2009**

**We make it simple.**

**You reach your loved ones by calling a local number. That's a lot cheaper than calling long distance. It's that simple!**

- We charge \$2.50 per month for the number.
- For Calls to anywhere in the U.S., we charge you 5¢ per minute
- To Mexico - 15¢; to Canada - 11¢, to just about anywhere else in the world - 31¢
- No Contract, No Credit Check, No Setup Fee, No Cancellation Fee, No Early Termination Fee
- Cancel anytime; any money left on the account is refunded

**Any time you refer a new customer and they sign up, you both get 300 free minutes! Some restrictions apply. Details upon request.**

**Tell Your Folks to Sign Up at [www.freedomline.net](http://www.freedomline.net)**

**Or Mail: FreedomLine**  
PO Box 7 - SCA  
Connersville, IN 47331

**Also see our long-running Classified Ad in this and every issue**

**FCC Reg. No. 0021217047**

# Eighth Circuit Upholds Injunction Over Cameras in Restrooms at Civil Commitment Center

by Matt Clarke

IN APRIL 2013 THE EIGHTH CIRCUIT Court of Appeals upheld a preliminary injunction granted by a federal district court in a lawsuit challenging the placement of video cameras in bathrooms at the Iowa Civil Commitment Unit for Sex Offenders, a secure facility.

John W. Arnzen III, Harold Williams, Galen K. Shaffer and Edward Lee Briggs, patients at the Civil Commitment Unit, filed a civil rights action pursuant to 42 U.S.C. § 1983, alleging that installing cameras in the restrooms at the Unit violated the Fourth Amendment's prohibition against unreasonable searches and their right to privacy. They then sought a preliminary injunction.

The district court denied the injunction with respect to multi-user bathrooms (those with multiple toilets, showers and sinks), and granted it with respect to single-user restrooms (those with a single toilet, shower and sink). The defendants appealed.

On appeal, administrators at the Civil Commitment Unit argued that the cameras were installed after a reported sexual assault and an incident in which a patient with a serious communicable disease engaged in consensual sex without informing the other patient of his disease. Although the cameras are not monitored and the video recordings are destroyed within two to three weeks unless they are being used in an investigation, the administrators claimed the cameras prevented assaults and other illicit behavior, and argued the district court should have deferred to their judgment as qualified professionals.

Reviewing the grant of the preliminary injunction under an abuse of discretion standard, the Eighth Circuit held the plaintiffs had the same Fourth Amendment rights as pretrial detainees. The appellate court noted that the patients had expressed more than just a general discomfort and embarrassment; they were victims of childhood sexual abuse, and "persuasively report[ed] significant ongoing trauma and distress related to the placement of cameras in their bathrooms, which they, in sometimes eloquent and disturbing detail, equate with their previ-

ous experiences of victimization."

The Court of Appeals wrote that while the unmonitored cameras might help deter illicit behavior and assist in investigations, they "do not provide immediate alerts concerning patient safety or directly prevent assaults or dangerous acts." Even the defendants acknowledged that providing restroom doors that lock from the inside could significantly reduce the risk of assaults. Also, since the entrances to the bathrooms are actively monitored via video cameras, staff could immediately investigate when more than one person enters a single-user restroom. Thus, the cameras are not the only way – and may not be the most effective way – to prevent assaults and illicit sexual activity in restroom areas.

The Eighth Circuit found "that in the

circumstances of this case there is a greater public interest in protecting the Fourth Amendment rights of the patients and their 'personal privacy and dignity against unwarranted intrusion by the State,'" and therefore affirmed the district court's preliminary injunction order. See: *Arnzen v. Palmer*, 713 F.3d 369 (8th Cir. 2013).

The case settled following remand, with the defendants agreeing to remove the video cameras in restrooms at the Civil Commitment Unit and to ensure that cameras in the hallways outside bathrooms "do not show patients in the shower or on the toilet." Further, the defendants agreed to pay \$22,000 in attorney's fees and to give \$100 in commissary or shopping account credit to each of the four plaintiffs. See: *Arnzen v. Palmer*, U.S.D.C. (N.D. Iowa), Case No. 5:12-cv-04001-DEO. ■

## First Circuit Dismisses Appeal of Court's Failure to Sanction Federal Prosecutor

by Matt Clarke

ON JULY 22, 2013, THE FIRST CIRCUIT Court of Appeals dismissed an appeal by the Massachusetts Bar Counsel challenging the failure of a district court and a three-judge disciplinary panel to discipline an Assistant U.S. Attorney who allegedly withheld exculpatory evidence in a federal criminal case.

Jeffrey Auerhahn was a U.S. Department of Justice (DOJ) special attorney for the investigation and prosecution of Boston's Patriarca crime family in the New England Strike Force's Organized Crime and Racketeering Section. He worked closely with Boston police detective Martin Coleman.

In investigating the 1985 murder of Vincent Limoli, who worked for Patriarca soldier Vincent Ferrara, the Strike Force was able to develop an informant named Walter Jordan, who, along with Pasquale Barone, was seen with Limoli shortly before he was killed. In exchange for almost complete immunity and being allowed into the witness protection program, Jordan

told Coleman and Auerhahn that Ferrara had ordered the hit on Limoli, Jordan had helped set up the hit and Barone had "whacked" Limoli.

Connecting Ferrara to the Limoli hit was crucial in prosecuting him on organized crime charges. Without evidence that Ferrara had ordered the hit on Limoli to move up in the Patriarca crime family, the RICO prosecution would have been compromised.

While waiting to testify in the trials of Ferrara and Barone, Jordan met with Detective Coleman and informed him that after the murder, Barone told him Ferrara had not given him permission to kill Limoli, and they had to flee Boston because Ferrara wanted to kill them both for murdering Limoli without authorization. Jordan admitted having withheld this information, and Coleman memorialized Jordan's admission in a handwritten memo.

Coleman then met privately with Auerhahn and was very upset about Jordan's potential testimony, which threatened to



derail the prosecution. Auerhahn claimed he did not ask about the details of what was wrong because Coleman was so upset that Auerhahn thought he might have a heart attack.

Coleman then initiated a phone call between him, Auerhahn and Jordan to talk about Jordan's testimony, and Jordan again stated that Barone said Ferrara had not given him permission to kill Limoli. Auerhahn later prepared a "significantly toned-down version" of Coleman's memo that was less damaging to the prosecution's case (the "Auerhahn memo"). At a subsequent meeting with Auerhahn present, after being pressured Jordan once again stated that Barone had denied Ferrara had given him permission, but said Barone had then immediately passed it off as a joke.

After Ferrara pleaded guilty, Auerhahn revealed Jordan's statements in a separate, related prosecution. Meanwhile, Barone was convicted and sentenced to life plus 20 years. Jordan contacted the Strike Force in 2002, claiming that he had been intimidated into giving false testimony against Ferrara and Barone. They both eventually

received habeas corpus relief and were released from prison; Barone had served 10 years while Ferrara had served 13.

In affirming the district court's grant of habeas relief, the First Circuit stated, in Ferrara's case, that "...we are dealing with more than simple neglect to turn over exculpatory evidence; the government manipulated the witness (Jordan) into reverting back to his original version of events, then effectively represented to the court and the defense that the witness was going to confirm the story (now known by the prosecution to be a manipulated tale) that [Ferrara] was responsible for killing Limoli."

The appellate court also noted that "[a]t the evidentiary hearing, Auerhahn claimed never to have seen the Auerhahn memo. The District Court rejected this self-serving disclaimer, finding explicitly 'that Auerhahn not only saw the document, he prepared it.'" See: *Ferrara v. United States*, 456 F.3d 278 (1st Cir. 2006).

The DOJ launched an investigation into the botched prosecution, and the DOJ's Office of Professional Responsibility released a 112-page report in 2005 that found Auerhahn had acted in reckless disregard to

discovery obligations and failed to comply with a court order to produce all of his notes of his meetings with Jordan. The U.S. Attorney issued a letter of reprimand.

Finding that a reprimand was inadequate, in 2007 the district court asked the state Bar Counsel to initiate disciplinary action against Auerhahn. Bar Counsel determined that Auerhahn had violated several state bar disciplinary rules and recommended that he be disciplined. The court appointed a three-judge panel to determine an appropriate sanction; however, the panel found that Bar Counsel had "failed to prove by clear and convincing evidence that Auerhahn ever learned of [Jordan's] statement, if it was made at all."

Bar Counsel appealed the decision, but the First Circuit determined there was no standing for the appeal, as Bar Counsel "was not a party to Auerhahn's disciplinary proceedings and thus may not appeal the Panel's decision." Consequently, the appeal was dismissed for lack of jurisdiction. See: *In re Auerhahn*, 724 F.3d 103 (1st Cir. 2013).

Auerhahn remains employed with the U.S. Attorney's office in Boston. ■

**William L Schmidt**  
ATTORNEY at LAW, P.C.

[911CIVILRIGHTS@GMAIL.COM](mailto:911CIVILRIGHTS@GMAIL.COM)

**559.261.2222 (clients only collect)**

**Legal Services for California Inmates:**

**APPEALS**

**WRITS OF HABEAS CORPUS**

**Civil Litigation**

**Catastrophic Injury Litigation**

**Money Management**

**Business Windup**

**Contracts**

CIVIL RIGHTS-SECTION 1983-FEDERAL AND STATE  
APPEALS AND WRITS- ONLY COMPLEX AND UNIQUE CASES  
PRISON-TRANSFER-DISCIPLINE-VISITING-CLASSIFICATION-HOUSING  
PROP. 36 RE-SENTENCING-3 STRIKES-MEDICAL-PAROLE HEARINGS

-----OUR CLIENTS GO HOME, HOW ABOUT YOU? -----

*Please submit a single page summary of your case. Due to the volume, we cannot return documents or respond to all inquires. We are not a low cost or pro bono law firm, but if you want results, write us.*

**P.O. BOX  
25001  
FRESNO, CA  
93729**

# Alabama Work Release Transportation, Medical and Drug Screen Costs Not “Incidental to Confinement”

by David M. Reutter

**A**LABAMA'S SUPREME COURT HAS HELD that the plain language of § 14-8-6, Ala. Code 1975 does not prohibit the Alabama Department of Corrections (ADOC) from collecting, over and above the 40% threshold established by that law, costs that are not incidental to a prisoner's confinement – including transportation costs and fees stemming from participation in the prison system's optional work-release program.

The December 6, 2013 ruling came in a class-action lawsuit that challenged the ADOC's deduction of more than 40% of prisoners' gross earnings for costs associated with transportation to employment, laundering work clothes, drug-testing fees and prisoner-initiated medical visits. [See: *PLN*, May 2008, p.38; July 2006, p.35]. Pursuant to § 14-8-6, Ala. Code 1975, the ADOC is authorized “to withhold up to 40% of an inmate's work-release earnings for costs ‘incident to the inmate's confinement.’”

The ADOC contended that it could make deductions for costs associated with those services beyond the 40% statutory threshold because they were not “incident to” a prisoner's incarceration. The plaintiffs in the class-action suit argued such costs were incidental, and thus not subject to additional withholdings.

The Alabama Supreme Court agreed with the ADOC, as the prisoners offered nothing to show that the ADOC's definition of incidental costs differed from the statutory language. ADOC Commissioner Kim Thomas testified that costs of confinement include “Electricity, gas, water, repairs on the buildings, salaries of employees and benefits, food, processing food, transporting food, gas, paper products, health care, mental health care.”

Transportation fees for work release are “not related to the confinement itself,” he stated, but are fees that “relate[] directly to [the inmate's] ... employment.” The Supreme Court agreed, finding work release transportation costs are related to the prisoner's “decision to participate in a voluntary program offered by” the ADOC.

Fees for drug tests, which cost \$31.50, are charged only if the prisoner tests positive

for illegal drug use on a prison-administered drug screening and the positive result is subsequently confirmed by “a free-world laboratory.” The \$3.00 medical co-pay for self-initiated prisoner medical visits is determined by medical staff, and intended to discourage “malinger[ing].”

The Supreme Court found the fees related to tests for illegal drug use and “purportedly unnecessary medical care” do not arise from a prisoner's confinement, but “from a voluntary and unnecessary undertaking by the inmate.”

The Court concluded that the ADOC's “interpretation of § 14-8-6 as permitting its collection of charges, which are not incident to the inmate's confinement, in excess of the 40% withholding cap established by that statute is both reasonable and consistent with the statutory language.” Accordingly, the lower court's order that held the ADOC was limited to deducting 40% of a prisoner's gross wages was reversed and remanded. Justice Glenn Murdock issued a dissenting opinion. See: *Thomas v. Merritt*, 2013 Ala. LEXIS 172 (Ala. Dec. 6, 2013). ■

## Seventh Circuit Upholds Dismissal of Suit Over Placement on Suicide Watch

by Matt Clarke

**T**HE SEVENTH CIRCUIT COURT OF Appeals has affirmed the dismissal of a prisoner's lawsuit over his placement on suicide watch and in administrative segregation.

Daryise L. Earl, a Wisconsin prisoner, filed a civil rights action pursuant to 42 U.S.C. § 1983 alleging that officials at the Racine County Jail were deliberately indifferent to his medical needs and violated his due process rights when they placed him on suicide watch following his conviction for first-degree intentional homicide, and required him to wear suicide-proof clothes to which he was allergic. Earl was on suicide watch for five days, then placed in administrative segregation for twelve days. During a later return to the jail for a hearing, he was again held in ad seg for seven days.

Jail officials claimed they had a policy requiring the placement of prisoners on suicide watch after conviction of a serious felony, until a mental health examination cleared them for general population. Earl alleged the suicide watch and stints in administrative segregation were in retaliation for false accusations that he had threatened guards at the jail.

Upon granting the defendants' motion for summary judgment, the district court held that neither the placement on suicide watch or in ad seg was “unusually harsh,” nor long enough to implicate a liberty interest. Therefore, no due process claim could

be raised. Further, because the jail guards summoned a nurse when Earl reported having an allergic reaction to the suicide-proof clothing and the nurse gave him medication and a cream despite not finding a rash, there was no evidence of deliberate indifference to his serious medical needs.

Earl appealed, arguing that the reason for his placement on suicide watch was a triable issue of fact. The Seventh Circuit held the reason he was on suicide watch or whether other, similarly situated prisoners were not placed on suicide watch did not matter. Because the suicide watch was of insufficient duration and lacked harsh conditions, it failed to implicate a liberty interest – which prevented Earl from raising a due process claim. The same reasoning applied to Earl's placement in ad seg: “his time in segregation was too short to affect his liberty, and he did not point to any conditions of administrative segregation that were any worse than general prison conditions.”

Earl also had no viable claim for deliberate indifference to his serious medical needs because the guards summoned a nurse, the nurse provided treatment and the guards followed the nurse's medical decision that he could continue wearing the suicide watch clothes. The judgment of the district court was therefore affirmed. See: *Earl v. Racine County Jail*, 718 F.3d 689 (7th Cir. 2013). ■



Stay in touch with a good Magazine!  
Get 5 Full One Year Subscriptions

**ONLY \$20!**  
+ \$5.99 p/h

Check your 5 magazines and underline three backup choices (in case of unavailability)

**"BEST DEAL ON THE POUND!"**

**Special!**

Until Sep 31, 2014  
1 FREE Subscription  
per paid 5 for 20 order!!  
Check 6 magazines instead of 5!

- ☐ ALLURE (12)
- ☐ AMERICAN PHOTO (6)
- ☐ ARTHRITIS SELF MANAGEMENT (6)
- ☐ ARTHRITIS TODAY (6)
- ☐ AUTOMOBILE (12)
- ☐ BACKPACKER (9)
- ☐ BETTER HOMES & GARDENS (12)
- ☐ BLACK ENTERPRISE (12)
- ☐ BOATING (10)
- ☐ BOATING WORLD (9)
- ☐ BON APPETIT (12)
- ☐ BOWHUNT AMERICA (6)
- ☐ BOWHUNTING WORLD (9)
- ☐ BRIDAL GUIDE (6)
- ☐ CABELA'S OUTFITTER JOURNAL (6)
- ☐ CAR & DRIVER (12)
- ☐ CHARISMA (12)
- ☐ COMPLEX MAGAZINE (6)

- ☐ CONDE NAST TRAVELER (12)
- ☐ COSMOPOLITAN (12)
- ☐ CRUISING WORLD (12)
- ☐ CYCLE WORLD (12)
- ☐ DETAILS - FASHION (10)
- ☐ DIABETES SELF MANAGEMENT (6)
- ☐ DIGITAL PHOTO (7)
- ☐ DIRT RIDER (12)
- ☐ EATING WELL (6)
- ☐ EBONY (12)
- ☐ ELLE (12)
- ☐ ELLE DECOR (10)
- ☐ ENTREPRENEUR (12)
- ☐ ESQUIRE (10)
- ☐ EVERY DAY WITH RACHAEL RAY (10)
- ☐ FAMILY CIRCLE (12)
- ☐ FAMILY FUN (10)
- ☐ FAST COMPANY (10)
- ☐ FIELD & STREAM (12)
- ☐ FITNESS (10)
- ☐ FLORIDA SPORT FISHING (6)
- ☐ FLYING (12)
- ☐ FOUR WHEEL & OFF ROAD (12)
- ☐ FOUR WHEELER (12)
- ☐ FREESKIER (6)
- ☐ GLAMOUR (12)
- ☐ GOLF DIGEST (12)
- ☐ GOLF TIPS (7)
- ☐ GOLFWEEK (38)
- ☐ GOOD HOUSEKEEPING (12)

- ☐ HARPERS BAZAAR (10)
- ☐ HOT BIKE (12)
- ☐ INC (12)
- ☐ INSTRUCTOR K - 8 (6)
- ☐ ISLANDS MAGAZINE (8)
- ☐ LATINA (10)
- ☐ LIFE EXTENSION (13)
- ☐ LOG HOME LIVING (9)
- ☐ LUCKY (10)
- ☐ MARIE CLAIRE (12)
- ☐ MARLIN (8)
- ☐ MEN'S FITNESS (10)
- ☐ MEN'S JOURNAL (12)
- ☐ MIDWEST LIVING (6)
- ☐ MINISTRY TODAY (6)
- ☐ MORE (10)
- ☐ MOTOR TREND (12)
- ☐ MOTORCYCLIST (12)
- ☐ NATURAL HEALTH (6)
- ☐ NYLON MAGAZINE (10)
- ☐ OK! MAGAZINE (52)
- ☐ OLD HOUSE JOURNAL (8)
- ☐ OUTDOOR LIFE (12)
- ☐ OUTDOOR PHOTOGRAPHER (11) NR\*
- ☐ OUTSIDE (12)
- ☐ PARENTS (12)
- ☐ PLANE & PILOT (12) NR\*
- ☐ POPULAR PHOTOGRAPHY (12)
- ☐ POPULAR SCIENCE (12)
- ☐ PREDATOR EXTREME (6)

- ☐ RED BULLETIN MAGAZINE (12)
- ☐ REDBOOK (11)
- ☐ ROAD & TRACK (10)
- ☐ ROLLING STONE (26)
- ☐ SALT WATER SPORTSMAN (10)
- ☐ PARENT & CHILD (8)
- ☐ SELF (12)
- ☐ SEVENTEEN (10)
- ☐ SHAPE (12)
- ☐ SIEMPRE MUJER (6)
- ☐ SKI MAGAZINE (6)
- ☐ SNOWBOARD (4)
- ☐ SPORT RIDER (10)
- ☐ TEEN VOGUE (10)
- ☐ TENNIS (6)
- ☐ THE ATLANTIC MONTHLY (10)
- ☐ TIMBER HOME LIVING (6)
- ☐ TOWN & COUNTRY (10)
- ☐ UPTOWN (6)
- ☐ US WEEKLY (52)
- ☐ VERANDA (6)
- ☐ W MAGAZINE (10)
- ☐ WEIGHT WATCHERS (6)
- ☐ WHITETAIL JOURNAL (6)
- ☐ WIRED (12)
- ☐ WOMAN'S DAY (12)
- ☐ WOOD (7)
- ☐ WORKING MOTHER (6)
- ☐ YACHTING (12)
- ☐ YOGA JOURNAL (9) \* No Renewal

OK TO COPY

"Tell your Friends and Families!"

\*\*\*\*DUE TO PUBLISHER PROCESSING TIMES, WE WILL NOT UNDER ANY CIRCUMSTANCES CHECK WITH ANY PUBLISHER ABOUT THE STATUS OF ANY MAGAZINE SUBSCRIPTION UNTIL AFTER 90 DAYS HAVE PASSED FROM THE DATE OF PROCESSING YOUR ORDER! NO EXCEPTIONS!\*\*\*\*

Name and Inmate # (please print, maximum 24 characters):																								
Address:																								
City:													State:			Zip:								

Allow 6-8 weeks for delivery. Pay by Check, Money Order or Order Online and use Credit Card or PayPal. Keep Address Short!

P.O. Box 2063, Fort Walton Beach, FL 32549  
www.InmateMagazineService.com



Stay in touch with a good Magazine!  
Get 5 Full One Year Subscriptions

**ONLY \$20!**  
+ \$5.99 p/h

Check your 5 magazines and underline three backup choices (in case of unavailability)

**"BEST DEAL ON THE POUND!"**

**Special!**

Until Sep 31, 2014  
1 FREE Subscription  
per paid 5 for 20 order!!  
Check 6 magazines instead of 5!

- ☐ ALLURE (12)
- ☐ AMERICAN PHOTO (6)
- ☐ ARTHRITIS SELF MANAGEMENT (6)
- ☐ ARTHRITIS TODAY (6)
- ☐ AUTOMOBILE (12)
- ☐ BACKPACKER (9)
- ☐ BETTER HOMES & GARDENS (12)
- ☐ BLACK ENTERPRISE (12)
- ☐ BOATING (10)
- ☐ BOATING WORLD (9)
- ☐ BON APPETIT (12)
- ☐ BOWHUNT AMERICA (6)
- ☐ BOWHUNTING WORLD (9)
- ☐ BRIDAL GUIDE (6)
- ☐ CABELA'S OUTFITTER JOURNAL (6)
- ☐ CAR & DRIVER (12)
- ☐ CHARISMA (12)
- ☐ COMPLEX MAGAZINE (6)

- ☐ CONDE NAST TRAVELER (12)
- ☐ COSMOPOLITAN (12)
- ☐ CRUISING WORLD (12)
- ☐ CYCLE WORLD (12)
- ☐ DETAILS - FASHION (10)
- ☐ DIABETES SELF MANAGEMENT (6)
- ☐ DIGITAL PHOTO (7)
- ☐ DIRT RIDER (12)
- ☐ EATING WELL (6)
- ☐ EBONY (12)
- ☐ ELLE (12)
- ☐ ELLE DECOR (10)
- ☐ ENTREPRENEUR (12)
- ☐ ESQUIRE (10)
- ☐ EVERY DAY WITH RACHAEL RAY (10)
- ☐ FAMILY CIRCLE (12)
- ☐ FAMILY FUN (10)
- ☐ FAST COMPANY (10)
- ☐ FIELD & STREAM (12)
- ☐ FITNESS (10)
- ☐ FLORIDA SPORT FISHING (6)
- ☐ FLYING (12)
- ☐ FOUR WHEEL & OFF ROAD (12)
- ☐ FOUR WHEELER (12)
- ☐ FREESKIER (6)
- ☐ GLAMOUR (12)
- ☐ GOLF DIGEST (12)
- ☐ GOLF TIPS (7)
- ☐ GOLFWEEK (38)
- ☐ GOOD HOUSEKEEPING (12)

- ☐ HARPERS BAZAAR (10)
- ☐ HOT BIKE (12)
- ☐ INC (12)
- ☐ INSTRUCTOR K - 8 (6)
- ☐ ISLANDS MAGAZINE (8)
- ☐ LATINA (10)
- ☐ LIFE EXTENSION (13)
- ☐ LOG HOME LIVING (9)
- ☐ LUCKY (10)
- ☐ MARIE CLAIRE (12)
- ☐ MARLIN (8)
- ☐ MEN'S FITNESS (10)
- ☐ MEN'S JOURNAL (12)
- ☐ MIDWEST LIVING (6)
- ☐ MINISTRY TODAY (6)
- ☐ MORE (10)
- ☐ MOTOR TREND (12)
- ☐ MOTORCYCLIST (12)
- ☐ NATURAL HEALTH (6)
- ☐ NYLON MAGAZINE (10)
- ☐ OK! MAGAZINE (52)
- ☐ OLD HOUSE JOURNAL (8)
- ☐ OUTDOOR LIFE (12)
- ☐ OUTDOOR PHOTOGRAPHER (11) NR\*
- ☐ OUTSIDE (12)
- ☐ PARENTS (12)
- ☐ PLANE & PILOT (12) NR\*
- ☐ POPULAR PHOTOGRAPHY (12)
- ☐ POPULAR SCIENCE (12)
- ☐ PREDATOR EXTREME (6)

- ☐ RED BULLETIN MAGAZINE (12)
- ☐ REDBOOK (11)
- ☐ ROAD & TRACK (10)
- ☐ ROLLING STONE (26)
- ☐ SALT WATER SPORTSMAN (10)
- ☐ PARENT & CHILD (8)
- ☐ SELF (12)
- ☐ SEVENTEEN (10)
- ☐ SHAPE (12)
- ☐ SIEMPRE MUJER (6)
- ☐ SKI MAGAZINE (6)
- ☐ SNOWBOARD (4)
- ☐ SPORT RIDER (10)
- ☐ TEEN VOGUE (10)
- ☐ TENNIS (6)
- ☐ THE ATLANTIC MONTHLY (10)
- ☐ TIMBER HOME LIVING (6)
- ☐ TOWN & COUNTRY (10)
- ☐ UPTOWN (6)
- ☐ US WEEKLY (52)
- ☐ VERANDA (6)
- ☐ W MAGAZINE (10)
- ☐ WEIGHT WATCHERS (6)
- ☐ WHITETAIL JOURNAL (6)
- ☐ WIRED (12)
- ☐ WOMAN'S DAY (12)
- ☐ WOOD (7)
- ☐ WORKING MOTHER (6)
- ☐ YACHTING (12)
- ☐ YOGA JOURNAL (9) \* No Renewal

OK TO COPY

"Tell your Friends and Families!"

\*\*\*\*DUE TO PUBLISHER PROCESSING TIMES, WE WILL NOT UNDER ANY CIRCUMSTANCES CHECK WITH ANY PUBLISHER ABOUT THE STATUS OF ANY MAGAZINE SUBSCRIPTION UNTIL AFTER 90 DAYS HAVE PASSED FROM THE DATE OF PROCESSING YOUR ORDER! NO EXCEPTIONS!\*\*\*\*

Name and Inmate # (please print, maximum 24 characters):																								
Address:																								
City:													State:			Zip:								

Allow 6-8 weeks for delivery. Pay by Check, Money Order or Order Online and use Credit Card or PayPal. Keep Address Short!

P.O. Box 2063, Fort Walton Beach, FL 32549  
www.InmateMagazineService.com

# Eighth Circuit Holds No SORNA Registration Requirement after Leaving U.S.

by Matt Clarke

**T**HE EIGHTH CIRCUIT COURT OF Appeals held in August 2013 that the Sex Offender Registration and Notification Act (SORNA) does not require a registered sex offender (RSO) who moves to a foreign country to notify the state of his change of address.

Robert D. Lunsford, a Missouri RSO, flew to the Philippines on a three-week round-trip ticket in 2011. He did not return to the United States or inform the Missouri sex offender registry of his change of address. He was arrested in the Philippines two months later and eventually deported to the U.S., where he was charged with failure to update his registration in violation of 18 U.S.C. § 2250(a).

Lunsford moved to dismiss the indictment on the grounds that SORNA did not require him to update his registration once he left the country; his motion was denied and he entered a conditional guilty plea. He then appealed the denial of the motion.

The Eighth Circuit observed that SORNA requires RSOs to keep their residency information current in each jurisdiction where they reside, are employed or are a student. An RSO who travels in interstate or foreign commerce without updating a registry as required by SORNA is in violation of 18 U.S.C. § 2250(a). Further, 42 U.S.C. § 16913(a) requires an RSO who changes his or her address to appear in person in at least one of the jurisdictions involved and inform them of the changes in registry information within three days of the move. However, the definition of “jurisdiction involved” in 42 U.S.C. § 16911(10) excludes foreign countries.

The government did not argue that Lunsford was a resident, student or employed in Missouri when he allegedly violated SORNA, which the plea agreement specified was “after he traveled in interstate and foreign commerce.” Therefore, “after Lunsford left the country, Missouri was not the location of his home or a place where he habitually lives, so Lunsford did not ‘reside’ in Missouri when he changed his residence.”

Although the National Guidelines for Sex Offender Registration and Notifica-

tion provide that an RSO who leaves the country must inform the jurisdiction in which he has been registered, under 73 Fed. Reg. 38,030, 38,066-67 (July 2, 2008), the guidelines do not address the language of the statute which requires an RSO to keep the registry current where he or she “resides,” not “resided.”

Therefore, and disagreeing with the Tenth Circuit insofar as it may have held otherwise in *United States v. Murphy*, 664

F.3d 798 (10th Cir. 2011) [*PLN*, Aug. 2012, p.30], the Eighth Circuit held that an RSO who travels to another country and resides there does not violate SORNA by failing to update the registry of the jurisdiction where he previously lived.

The judgment of the district court was reversed and the case remanded with instructions to dismiss the indictment. See: *United States v. Lunsford*, 725 F.3d 859 (8th Cir. 2013). ■

## Fourth Circuit Finds PLRA Attorney Fee Cap Constitutional

by David M. Reutter

**T**HE FOURTH CIRCUIT COURT OF Appeals held on November 1, 2013 that the attorney fee provision of the Prison Litigation Reform Act (PLRA) is constitutional. The ruling was in alignment with other appellate courts that have considered the issue.

North Carolina state prisoner Jamey Lamont Wilkins filed a federal civil rights complaint in 2008, alleging that a guard at the Lanesboro Correctional Institute had “maliciously and sadistically” assaulted him with “excessive force” in violation of the Eighth Amendment. The district court dismissed the lawsuit for failure to state a claim because Wilkins had alleged no more than *de minimis* injury.

The Fourth Circuit affirmed that ruling in *Wilkins v. Gaddy*, 308 Fed.Appx. 696 (4th Cir. 2009). The Supreme Court, however, granted certiorari and reversed, holding the “core judicial inquiry” in Eighth Amendment claims is not focused on the “extent of the injury” sustained but rather on the “nature of the force” used. See: *Wilkins v. Gaddy*, 559 U.S. 34 (2010) [*PLN*, Dec. 2010, p.49].

Following remand, Wilkins obtained representation from North Carolina Prisoner Legal Services and proceeded to trial. The jury found the guard, Alexander Gaddy, liable for assault, but declined to award compensatory or punitive damages. Instead, the jurors awarded nominal damages of \$.99

and the district court rounded up to enter judgment for \$1.00.

As the prevailing party, Wilkins filed a motion for \$92,306.25 in attorney fees under the fee-shifting provisions of 42 U.S.C. § 1988. The district court awarded fees in the amount of \$1.40 and rejected Wilkins’ argument that the PLRA’s cap on attorney fees, 42 U.S.C. § 1997e(d)(2), is unconstitutional because it “irrationally treat[s] prisoner and non-prisoner litigants differently.”

The challenged provision of the PLRA limits attorney fee awards that a successful prisoner litigant may recover in a civil rights action to a maximum of 150% of the monetary judgment. There is no similar limitation for non-incarcerated plaintiffs.

On appeal, the Fourth Circuit noted that with the Civil Rights Attorney Fees Award Act of 1976, codified at 42 U.S.C. 1988, Congress abrogated the “American Rule” which requires that a litigant typically must pay the costs of his or her own attorney. “But what Congress provides, Congress can adjust or take away,” the appellate court wrote.

In an effort to reduce the “ever-growing number of prison-condition lawsuits that were threatening to overwhelm the capacity of the federal judiciary,” Congress enacted the Prison Litigation Reform Act, which was signed into law by President Clinton in 1996. The Court of Appeals held that



while § 1997e(d)(2) may not be the only or optimal way of stemming baseless prisoner lawsuits, Congress had acted rationally in adopting that provision of the PLRA.

The cap on attorney fee awards requires lawyers to carefully weigh the merits of prison-related lawsuits, and requires greater odds of success in such cases. This, Congress could have rationally concluded, would prevent the filing of at least some ultimately meritless claims.

Congress was also free to conclude that attorney fee awards such as the one sought in this case are so disproportionate to a monetary judgment that they are an unwise use of public funds. Based upon these rationales, the district court's order awarding \$1.40 in attorney fees was affirmed. See: *Wilkins v. Gaddy*, 734 F.3d 344 (4th Cir. 2013).

If prisoners wonder why attorneys are often reluctant to take prison-related civil rights cases, the paltry fee award in this case serves as an apt illustration. In other cases, attorneys have been awarded fees of \$1.50 based on nominal damage awards; for example, in *Bovin v. Black*, 225 F.3d 36 (1st Cir. 2000) and *Foult v. Charrier*, 262 F.3d 687 (8th Cir. 2002) [*PLN*, Nov. 2002, p.21]. ■

### **Roget's Thesaurus**

Can't think of the right word?  
Let Roget's help you! Over 11,000  
words listed alphabetically.  
See page 61 for more information.

## **Alabama DOC Short Hair Policy Does Not Violate RLUIPA**

*by David M. Reutter*

**T**HE ELEVENTH CIRCUIT HELD IN JULY 2013 that an Alabama Department of Corrections (ADOC) policy requiring prisoners to maintain short hair does not violate their rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA).

The appellate ruling was entered in a lawsuit initially filed in November 1993; it was the third time the case had come before the Court of Appeals. The suit, filed by Native American ADOC prisoners, was on appeal following a bench trial in which the district court ruled in favor of the ADOC's hair-length policy.

The Court of Appeals noted there was no dispute that the policy substantially burdens the religious exercise of Native American prisoners. It was also beyond dispute that the ADOC has compelling interests in security, discipline and hygiene within state prisons, and in the public's safety in the event of escapes if prisoners could subsequently alter their appearance by cutting their hair.

The district court's decision credited the ADOC's witnesses who testified as to how the hair-length policy addresses the concerns of prison officials. Alternatives such as exempting Native American prisoners from hair cuts,

requiring prisoners to search their own long hair and using a computer program to manipulate prisoners' appearances to create pictures of what they would look like with short hair did not eliminate those concerns.

While the practices of other prison systems were relevant, the Eleventh Circuit said they were not controlling. "The ADOC has shown that its departure from the practices of other jurisdictions stems not from a stubborn refusal to accept a workable alternative, but rather a calculated decision not to absorb the added risks that its fellow institutions have chosen to tolerate," wrote the appellate court. "This cannot amount to a RLUIPA violation."

The fact that hair length standards for male and female prisoners differed also was unavailing, as the district court noted that male prisoners pose a greater threat than female prisoners. "RLUIPA does not require the ADOC to enforce a sex-blind hair length policy," the Court of Appeals held. The judgment of the district court was affirmed.

The plaintiffs filed a petition for writ of certiorari with the U.S. Supreme Court in February 2014, which remains pending. See: *Knight v. Thompson*, 723 F.3d 1275 (11th Cir. 2013). ■

### **LAW OFFICES OF**

## **ELMER ROBERT KEACH, III**



Law Offices of Elmer Robert Keach, III, PC  
One Pine West Plaza, Suite 109  
Albany, NY 12205-5531  
518.434.1718  
www.keachlawfirm.com

Attorney Bob Keach  
NITA Master Advocate  
Member, Multi-Million Dollar Advocates Forum  
Outside Counsel, Prison Legal News

### **Experienced Civil Rights Attorney dedicated to seeking justice for those who are incarcerated**

*Custodial Death Cases • Wrongful Arrest and Incarceration  
Medical Indifference Cases • Corrections and Police Brutality  
Sexual Abuse and Assault • Illegal Strip Searches  
Class Actions • First Amendment Litigation*

### **WHEN YOU OR A LOVED ONE HAVE BEEN WRONGED, YOU HAVE A VOICE.**

Attorney Keach prefers all inquiries by mail to be typed, and limited to five pages.  
DO NOT SEND UNSOLICITED RECORDS. THEY CANNOT BE RETURNED.  
Make sure to exhaust your administrative remedies and comply with state law notice requirements, if applicable, to preserve state law intentional tort/negligence claims.

# Texas: Clerk May Not Bill Defendant for Attorney Fees Not Ordered by Court

by Matt Clarke

**T**HE TEXAS COURT OF CRIMINAL APPEALS held last year that a district clerk may not send an indigent prisoner a bill of costs for court-appointed attorney fees in his criminal case when the court did not make a finding that he was able to pay the fees and never ordered them paid.

Pursuant to a plea bargain, Jefferie Anteries Daniel was convicted of forgery of a check in Bexar County, Texas in 2002. The trial court assessed court costs of \$295.25 against him, but assessed no costs for a court-appointed attorney. Although it was apparent from the judgment that Daniel was represented by counsel, there was no indication the attorney had been appointed by the court.

More than nine years after his conviction, the Bexar County District Clerk sent Daniel a bill of costs in the forgery case that assessed both the \$295.25 in court costs and an additional \$7,945.00 in fees for an appointed attorney. Daniel filed a post-conviction petition for writ of habeas corpus, challenging the attorney fees being assessed without a court order and without a determination that he was able to pay. He asserted that he was indigent at trial and remained indigent and unable to pay the appointed attorney fees.

The trial court recommended dismissal of Daniel's petition, as it raised no issue which challenged his conviction, and the Texas Court of Criminal Appeals ordered additional fact finding. The trial court then found that there had been no hearing on Daniel's ability to pay court-appointed attorney fees after he was determined to be indigent, and recommended that relief be granted.

The Court of Criminal Appeals held the trial court was correct the first time in that the petition raised no issues challenging Daniel's conviction, and thus relief could not be granted under the habeas corpus statutes. However, the appellate court interpreted the petition as being one for a writ of mandamus, under which it could grant relief.

Referencing the requirements of Article 26.05(g), Texas Code of Criminal Procedure, and *Mayer v. State*, 309 S.W.3d

552 (Tex. Crim. App. 2010), the Court of Criminal Appeals held that "the defendant's financial resources and ability to pay are explicit critical elements in the trial court's determination of the propriety of ordering reimbursement of costs and fees." The Court found that the bill of costs "was not predicated upon any findings whatsoever with respect to these 'critical elements.'" Because no findings were made during the nine years between the entry of the judg-

ment and the clerk's issuance of the bill of costs, there was "no basis for the assessment of attorney fees in the latter."

The appellate court declined to grant post-conviction relief, but taking the petition as one for mandamus, conditionally granted extraordinary relief and ordered the district clerk to remove from the bill of costs the assessment of court-appointed attorney fees. See: *In re Daniel*, 396 S.W.3d 545 (Tex. Crim. App. 2013). ■

## Fifth Circuit: "Mailbox Rule" Applies to Texas State Habeas Petitions

**T**HE FIFTH CIRCUIT COURT OF APPEALS has held that the "mailbox rule" of *Houston v. Lack*, 487 U.S. 266 (1988) now applies to determining the date when Texas prisoners file state habeas corpus petitions for the purpose of calculating the applicable period for the AEDPA's one-year statute of limitations in which to file federal habeas petitions.

Kenneth Richards, a Texas state prisoner, delivered a state petition for a writ of habeas corpus to prison authorities 329 days after his state criminal conviction became final. The court clerk did not stamp the petition as being filed for another 37 days. Twenty-two days after the petition was denied by the state court, Richards mailed his federal application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The respondent filed a motion for summary judgment based on untimeliness grounds. The district court granted the motion and dismissed the petition, and Richards appealed.

"A person in state custody has one year to apply for a writ of habeas corpus in federal court. 28 U.S.C. § 2244(d)(1). The one-year period begins to run, as relevant here, on the date the conviction became final at the conclusion of the time to seek direct review, § 2244(d)(1)(A), though the period is tolled while a properly filed state post-conviction petition is pending, § 2244(d)(2)," the Fifth Circuit wrote.

The appellate court noted that in *Coleman v. Johnson*, 184 F.3d 398 (5<sup>th</sup> Cir.

1999), it had held that under Texas law, the mailbox rule did not apply to state habeas petitions. However, in *Campbell v. State*, 320 S.W.3d 338 (Tex. Crim. App. 2010), the Texas Court of Criminal Appeals applied the mailbox rule to criminal proceedings, finding "that the pleadings of pro se inmates shall be deemed filed at the time they are delivered to prison authorities for forwarding to the court clerk."

Therefore, the Fifth Circuit held *Coleman* was no longer valid and the mailbox rule now applies to Texas prisoners' state habeas filings. The dismissal of Richards' petition was reversed and the case remanded for further proceedings. See: *Richards v. Thaler*, 710 F.3d 573 (5<sup>th</sup> Cir. 2013).

Following remand, Richards' habeas petition was dismissed by the federal district court on the merits in May 2014. He was challenging his 25-year sentence for possession of a cell phone in a correctional facility. See: *Richards v. Stephens*, 2014 U.S. Dist. LEXIS 65098 (S.D. Tex. May 12, 2014). ■

### Writing to Win

Need to write better? *Writing to Win* will teach you the basics of how to compose clear and convincing written and oral legal arguments! 270 pages packed with solid, practical advice and tips.

\$19.95 from PLN's Book Store!

See page 61 for more information.

# Fifth Circuit Holds Prison Guard's Injury-Causing Reckless Driving States Nonfrivolous Claim

by Matt Clarke

**T**HE FIFTH CIRCUIT COURT OF APPEALS held last year that a district court erred when it dismissed a prisoner's claim that he was severely injured when a guard driving a transport van slammed on the brakes, throwing the prisoner into the van's security cage.

Texas state prisoner Bruce A. Rogers was being transported from the Wayne Scott Unit to the Houston Veterans Hospital in June 2008 when Jose L. Garcia, Jr., the guard driving the van, slammed on the brakes. Rogers was seated on a bench perpendicular to the direction of travel. He was handcuffed and shackled with leg irons connected to the handcuffs by a chain, which prevented him from bracing himself. There were no seatbelts for prisoners.

According to Rogers, he hit the barrier of the van's security cage head-first and suffered head, neck, spinal, vision and hand injuries, including a three-inch laceration to his scalp that bled profusely and was "gouged open to the bone." Instead of checking on Rogers, the transport guards continued to the hospital.

The examining physician told them to take Rogers to the ER so his open, bleeding head wound could be treated. Instead, they returned Rogers to the Wayne Scott Unit and took him to the prison's infirmary.

This allegedly resulted in a 5-hour delay in treatment of his injuries and a delay of over a year before the full extent of his injuries was discovered after an MRI was finally performed.

Rogers filed a pro se 42 U.S.C. § 1983 civil rights action in federal court alleging Eighth Amendment violations for Garcia's reckless driving and the delay in medical treatment. The district court dismissed his complaint as frivolous and for failure to state a claim upon which relief may be granted under 28 U.S.C. § 1915(e)(2), without ordering service on the defendants. Rogers appealed.

Distinguishing this case from several previous cases in which it found that guards weren't liable when prisoners were injured in transportation accidents, the Fifth Circuit held that Rogers stated a nonfrivolous claim with respect to Garcia's reckless driving.

Rogers had alleged that Garcia was darting in and out of traffic at high speeds. He also claimed that when asked by another guard whether such injuries were common, Garcia replied "yes," just the previous week there had been an incident in which six prisoners were injured because a guard had slammed on the brakes, saying "it happens all the time, isn't a big deal." The appellate court held this additional

allegation of reckless driving differentiated the case and stated a claim for more than mere negligence, as it indicated Garcia was deliberately indifferent to Rogers' safety. Therefore, that claim should not have been dismissed upon preliminary screening by the district court.

The dismissal of Rogers' claim related to the delay in medical treatment was affirmed, however, because the guards had taken him to a doctor at the Veterans Hospital and he had not shown that they knew the delay would pose a serious risk of substantial harm. The district court's dismissal of the non-driving transport guard and the guards' supervisor as defendants also was upheld. Accordingly, the reckless driving-related claim against Garcia was reinstated and the case remanded for further proceedings. One appellate judge, dissenting, would have upheld the dismissal of all the claims. See: *Rogers v. Boatright*, 709 F.3d 403 (5th Cir. 2013).

Following remand, Rogers moved to voluntarily dismiss his suit in October 2013, stating he did "not feel that [he] could receive a fair and impartial hearing concerning the outcome of this civil action," due to the district court's initial dismissal of the case. The court granted his motion and dismissed the action without prejudice. ■

## Support Prison Legal News with these beautiful gifts!

CALL 561-360-2523, MAIL ORDER OR USE WEB FORM

[HTTP://WWW.PRISONLEGALNEWS.ORG/](http://www.prisonlegalnews.org/)



## Hand Embroidered Greeting Cards



Made by women prisoners in Cochabamba, Bolivia. Each card is individually made, no two are identical. The prisoners are paid a fair wage for each card and keep 100% of the pay to support themselves and their families. Local fair trade non-profits in Bolivia supply the materials for the cards. **\$6.**

**Hand Made Hemp Tote Bag** All natural hemp tote bag hand made in Vermont with the Prison Legal News logo on both sides, in red and black. Great for carrying books, groceries, and more! Stamped on the inside that no sweatshop, prison or child labor was used in its manufacture. **\$12.**

\$6 shipping and handling for orders under \$50.

# Courts Struggle with Child Pornography Restitution Following Supreme Court Ruling

THE SEVENTH CIRCUIT COURT OF APPEALS is among the latest federal courts to tackle the issue of restitution for victims of child pornography – an issue addressed in a recent U.S. Supreme Court decision that legal observers say only muddies the waters for victims who attempt to recover damages from defendants in child porn cases.

The high court's ruling prompted quick action by two U.S. Senators to craft legislation designed to fix the perceived problem, but their proposed bill remains stalled in committee.

In November 2012, the Seventh Circuit held that victims in a child pornography case may intervene to defend the award of restitution in their favor, but only at the appellate level and only if they can prove that they suffered damages as a direct result of a defendant's actions.

The appellate court issued its decision in the appeal of Christopher L. Laraneta, who was sentenced by an Indiana federal district court to 30 years in prison and lifetime supervised release after pleading guilty to seven counts of violating federal child pornography laws. The district court also ordered him to pay \$3.4 million in restitution to a victim known only by the pseudonym "Amy" and nearly \$1 million to a second victim known as "Vicky," because he possessed images of them being raped when they were 8 and 9 years old. Those amounts represented the full amount of restitution awarded to the two victims.

The Seventh Circuit ruled that Laraneta could not be held responsible for the entire amount because "tens of thousands of pornographic images of Amy and Vicky" being sexually abused "have circulated on the Internet," raising the question of just how much harm Laraneta alone had caused them.

The determining factor, the Court of Appeals wrote, should be whether Laraneta was responsible for uploading and distributing the images. The Court held that without "a finding that he was a distributor, it is beyond implausible that the victims would have suffered the harm they did had he been the only person in the world to view pornographic images of them."

The Seventh Circuit also ruled that

the district court lacked the legal authority to make Laraneta's restitution liability "joint and several" for Amy's and Vicky's total losses. Therefore, the appellate court "remanded for a redetermination not of the victims' total damages, which are conceded, but of the portion allocable to the defendant."

The ruling foreshadowed the U.S. Supreme Court's decision in *Paroline v. United States*, 134 S.Ct. 1710 (2014), in which a sharply divided court determined that a defendant convicted of possessing child pornography can only be held responsible for damages suffered by the victim if the defendant "proximately caused" the victim's suffering. [See: *PLN*, Feb. 2014, p.20].

Writing for the majority, Justice Anthony M. Kennedy noted that a defendant should have to pay "for the consequences and gravity of their own conduct, not the conduct of others."

The circumstances of Laraneta's case are almost identical to those in *Paroline*. Doyle Randall Paroline pleaded guilty to possessing 150 to 300 images of child pornography, including two images of Amy, and was sentenced to two years in prison. The district court refused to order him to pay restitution on the grounds that federal prosecutors could not prove that Amy's suffering "would not have occurred without [Paroline's] possession of her images."

On appeal, the Fifth Circuit reversed the lower court and ordered Paroline to pay the entire \$3.4 million in restitution – the same conclusion reached by the district court in Laraneta's case. The Court of Appeals held that it was up to Paroline, not Amy, to find other defendants who were also liable for Amy's suffering and could contribute to the full restitution amount.

On April 23, 2014, the Supreme Court reversed the Fifth Circuit and returned the case to the district court to determine how much restitution Paroline should have to pay. Justice Kennedy sought middle ground between the district court's initial determination that Paroline should pay none of the \$3.4 million, and the Fifth Circuit's finding that he should pay all of it. He wrote that the only sensible way to

decide the proper amount was for courts to order "reasonable and circumscribed" restitution "in an amount that comports with the defendant's relative role" in child pornography cases.

"This cannot be a precise mathematical inquiry and involves the use of discretion and sound judgment," Justice Kennedy stated. Justices Ginsburg, Breyer, Alito and Kagan joined Kennedy in crafting the majority opinion.

Legal observers said that by using such vague, imprecise language, Justice Kennedy set a nearly impossible standard for district courts to follow in determining restitution and, as a result, victims may never collect any damages.

Amy's disappointment in the ruling was immediate. "I am surprised and confused by the Court's decision," she wrote in the *Washington Post*. "I really don't understand where this leaves me and other victims who now have to live with trying to get restitution probably for the rest of our lives."

"The Supreme Court said we should keep going back to the district courts over and over again, but that's what I have been doing for almost six years now," she continued. "It's crazy that people keep committing this crime year after year and now victims like me have to keep reliving it year after year."

"I'm not sure how this decision helps anyone to really know if, when, and how restitution will ever be paid to kids and other victims of this endless crime. I see that the Court said I should get full restitution 'someday,' I just wonder when that day will be and how long I and Vicky and other victims will have to wait for justice."

Two U.S. Senators reacted quickly to the Supreme Court ruling, and crafted bipartisan legislation to address the murky issue of restitution in child porn cases.

On May 7, 2014, Senators Chuck Schumer and Orrin Hatch introduced the Amy and Vicky Child Pornography Victim Restitution Improvement Act (S.2301). Under the proposed legislation, federal courts would be required to consider the total harm to a victim, including any harm resulting from persons who have not yet been convicted of a crime involving the



victim's image. The bill places the burden on the defendant instead of the victim to spread the cost of the total restitution amount among other defendants.

"The tragic effect of the Supreme Court's decision in *Paroline* was this: the more widely viewed the pornographic image of a victim, and the more offenders there are, the more difficult it is for the victim to recover for her anguish and her damages," Schumer explained. "But there should not be safety in numbers."

"Senator Hatch and I, and our other co-sponsors, will work hard to make sure victims of these most heinous of crimes get, at a minimum, what they are entitled to get – full restitution for the full harm caused by these terrible acts."

The legislation would allow victims to collect full restitution for all suffering throughout their lifetimes, including the cost of therapy, medical expenses, lost income and attorney's fees. The bill would permit – but not require – judges to order defendants to pay the full amount of restitution, and would set minimum restitution of \$25,000 in child pornography cases (higher for more severe offenses, including

\$150,000 for distribution and \$250,000 for production).

If there are multiple defendants convicted of crimes involving the same victim, the bill states, a defendant can sue to share the cost of restitution among the other defendants.

In Laraneta's case, the Seventh Circuit held that Amy was entitled to intervene to protect her interest in receiving restitution, but "it would be a mistake to allow intervention at the district court level." Such intervention would be a "recipe for chaos." For example, the appellate court envisioned a plea bargain in which the victim argues for a different agreement than that struck between the defense and the prosecution. Or perhaps a trial in which victims' attorneys present witnesses, cross examine the defendants' witnesses or participate at sentencing to persuade the judge to enter a harsher sentence.

The Court of Appeals ruled that complications of intervention at the appellate stage, however, are fewer because participation is limited to the filing of briefs and, at the appellate court's discretion, participation in oral arguments.

"The case for intervention is most compelling when a person has a direct financial stake in a case and cannot be certain that any party has an interest in defending that stake," the Seventh Circuit wrote. "The government has no financial stake in restitution to victims of crime."

The Court of Appeals remanded the case to determine the amount of Laraneta's restitution. See: *United States v. Laraneta*, 700 F.3d 983 (7th Cir. 2012), *rehearing en banc denied, cert. denied*.

As of August 2014, the restitution hearings for both Laraneta and Paroline remained pending before the district courts in their respective criminal cases. ■

Additional sources: [www.ikeepsafe.org](http://www.ikeepsafe.org), [www.slate.com](http://www.slate.com), [www.nytimes.com](http://www.nytimes.com), *Washington Post*

**Hepatitis & Liver Disease:  
A Guide to Treating & Living  
with Hepatitis & Liver Disease**  
Revised ed. By Dr. Melissa Palmer  
See page 61 for more information.

- \* *Post-Conviction Specialists (Habeas Corpus/2254/2255/AEDPA/Procedural Bars/Coram Nobis/PRP/Certiorari/Sentence Modifications/DNA and more).*
- \* *All 50 States, D.C., Federal District/Appellate and Supreme Court.*
- \* *Special programs available for Veterans.*
- \* *Payment plans available.*
- \* *Now accepting Credit Cards.*
- \* *FREE initial consultation (send SASE)*
- \* *CALIFORNIA INMATES: We do 2-3 striker VARGAS petitions*
- \* *FEDERAL INMATES: We do "Drugs Minus Two" Petitions which are RETROACTIVE!*
- \* *SPECIAL RATES FOR PLN SUBSCRIBERS!*

**Legal Insights Inc.**

25602 Alicia Parkway Suite 323

Laguna Hills, CA 92653

714-941-0578

[info@legalinsights.org](mailto:info@legalinsights.org)

[www.legalinsights.org](http://www.legalinsights.org)

A California 501(c)(3) Non-Profit Organization

## Learn The Law!

It's a POWERFUL influence in your life.

Choose education to help yourself and others. Blackstone's Independent Study Paralegal Program offers you the opportunity to be productive while serving time.

- Learn Civil & Criminal Law
- Learn Legal Research
- 110 Years of Legal Training Experience
- Study in Your Spare Time
- Affordable Tuition, Easy Payment Plan

Only  
**\$30.00**  
Per Month

☐ **Yes! I'd like to learn more** ☐ **Paralegal Course**  
Please rush me **FREE** course information.

Name \_\_\_\_\_ Doc# \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**Blackstone  
Career Institute**

Your tuition cost covers your entire program including all textbooks, study guides, exam and homework evaluation services, and your certificate.

P.O. Box 3717 • Allentown, PA 18106

# Prison Labor Boosts Wal-Mart's Profits Despite Pledge

by Derek Gilna

**T**HE SUPPLIER PLEDGE FOR AMERICA'S largest retailer states: "Forced or prison labor will not be tolerated by Wal-Mart. Wal-Mart will not accept products from Vendor Partners who utilize in any manner forced labor or prison labor in the manufacture or in their contracting, subcontracting or other relationships for the manufacture of their products."

However, the company has become a retailing behemoth in the United States and abroad by carefully watching its bottom line and squeezing every ounce of profit out of each component in its supply chain. Recent developments, which include reports concerning the use of prison labor and alleged abuses in labor practices by its suppliers, have called into question whether Wal-Mart is the good corporate citizen it claims to be.

One area in which Wal-Mart has profited through the use of prison labor is in "demanufacturing." That term refers to the disposal of millions of dollars' worth of "customer returns, buy-backs, over-stocks, shelf-pulls, scratch-and-dent, and excess inventories" that all large retailers must contend with, according to Al Norman, the founder of Sprawl Busters. What separates Wal-Mart from other retailers is its use of what amounts to taxpayer-subsidized prison labor in the demanufacturing process.

Of course, Wal-Mart is not directly involved in that process. Rather, it relies on sub-contractors; the company just reaps the bottom-line benefits. Suppliers and sub-contractors, eager to expand their sales and increase their profits, are only too willing to contract with Wal-Mart. Before long, they are virtual "captives" of the mammoth retailer, dependent on their contracts with the company for their economic survival and willing to cut corners to preserve their profit margins.

In fairness, Wal-Mart did not originate this practice. When the firm was in its infancy, Sears Roebuck & Company was accused of a similar strategy – becoming the primary purchaser of a supplier's products, then threatening to discontinue purchases unless they received various concessions such as lower prices. Suppliers were sometimes even absorbed into the company. But while Sears may have pioneered the process for becoming a powerhouse retailer, Wal-Mart has greatly refined it.

According to the *Huffington Post*, one of Wal-Mart's demanufacturing partners is Minnesota-based Jacobs Trading Company, or JTC – which, based on its confidential agreement with Wal-Mart, "remove(s) all of the identifying marks, including, but not limited to, manufacturer's or retailer's names, logos, serial number, UPC numbers, RA numbers, and other identifying marks ... from the packaging, or to clearly and conspicuously mark the packaging so that it is readily apparent and obvious that the Merchandise has been through a salvage process."

JTC has made a great deal of money by selling customer returns, overstock and close-out merchandise from nine distribution centers, including in Taft, Oklahoma. There, around 25 female prisoners at the Eddie Warrior Correctional Center process semi-loads of merchandise from JTC, remove any identifying marks, bar codes and labels, and palletize and reship the goods nationwide for resale, according to the Oklahoma Department of Corrections.

In Nevada, around 60 prisoners perform similar tasks for JTC. The work is "physically demanding and requires cognitive and motor skills and problem-solving abilities," according to one prisoner worker. The products being demanufactured and processed include not only clothing but also compressors, ceiling fans, yard lights and other items from various retailers.

JTC has reportedly operated demanufacturing programs using prison labor in other states, too.

Unfortunately, the U.S. Department of Justice is a willing accomplice in this exploitative practice. The Prison Industry Enhancement Certification Program (PIECP), passed by Congress in 1979, authorizes the DOJ "to establish employment opportunities for offenders that approximate private-sector work ... to place inmates in a realistic work environment, pay them the prevailing local wage for similar work, and enable them to acquire marketable skills..." [See: *PLN*, March 2010, p.1].

However, prisoners in PIECP programs typically do not receive the "prevailing wage" – only the federal minimum wage, which is subject to deductions of up to 80% for room and board, victim restitution, taxes, etc. Further, prisoners engaged in "service"

work, as opposed to manufacturing goods, are not paid the minimum wage. JTC's prison program in Oklahoma isn't even classified as a PIECP program.

It is not only in the area of "demanufacturing" that Wal-Mart benefits from prison labor to boost its profits. Several large agribusiness companies, such as Martori Farms in Arizona, have used prisoner workers to supply their corporate buyers – including Wal-Mart – in spite of the company's supplier pledge.

According to the Arizona Department of Corrections, the state has supplied prison labor for private agricultural businesses for almost 20 years. Since Arizona fines farmers who use undocumented workers, there was pressure on state officials to make up the labor shortfall by utilizing prisoners to perform farm work. [See: *PLN*, May 2012, p.1; Feb. 2008, p.16].

TruthOut, an independent online news site, reported that Martori Farms employed female prisoners in Arizona and paid them around \$2.00 per hour in net wages. Martori, which has supplied Wal-Mart with fruits and vegetables for over two decades, bussed the women from the Perryville Unit early in the morning to the company's fields, where they worked in all kinds of conditions and weather.

Prisoners complained of abusive supervisors, difficult working conditions and substandard medical care. Complaints about these conditions often brought threats of retaliation, incident reports that could lead to loss of privileges such as commissary and phone calls, and possible loss of "good time" credits that reduce a prisoner's sentence for good behavior.

According to Martori representative Joe Oddo, the company discontinued using prison labor in 2012 due to "negative press" by the news media, among other concerns. Martori had employed approximately 100 Arizona prisoners to pick crops.

Outside the prison context, the labor practices of Wal-Mart's suppliers have drawn scrutiny in California, Illinois and New Jersey. Over \$1 million in fines was levied in connection with wage and hour violations at a California warehouse operated by a Wal-Mart sub-contractor, Schneider Logistics. Illinois workers employed by a Wal-Mart contractor filed a class-action

suit alleging wage violations, while New Jersey workers have been fired for complaining about a lack of safety equipment.

However, Wal-Mart's connection with prison labor has gone largely unnoticed even though prisoners typically work in substandard conditions for low pay, and lack the benefits and safeguards afforded non-incarcerated employees. Prisoners whose labor is exploited have few advocates despite the fact that similar behavior by companies like Wal-Mart in the freeworld employment market, whether domestically or overseas, would result in public outrage.

Not that Wal-Mart is the only major retailer that has benefitted from prison labor. Kmart and Saks Fifth Avenue have been linked to goods produced by prisoners in China, as has Primark, a British-owned company that sells clothing in Europe.

For example, in 2012 an Oregon resident, Julie Keith, found a letter written by a prisoner at a Chinese forced labor camp tucked inside a box of Halloween decorations she had purchased at Kmart. Also in 2012, Stephanie Wilson, a shopper at Saks, found a letter from a Chinese prisoner in a paper shopping bag. "We are ill-treated

and work like slaves for 13 hours every day producing these bags in bulk in the prison factory," the letter stated. And in 2014, a woman in Northern Ireland found a plea for help written in Chinese, wrapped around a prison identification card, hidden in a pair of pants she had purchased at Primark. ■

Sources: [www.buffingtonpost.com](http://www.buffingtonpost.com), *Wall Street Journal*, [www.ok.gov](http://www.ok.gov), [www.npr.org](http://www.npr.org), [www.nationalcia.org](http://www.nationalcia.org), [www.dailykos.com](http://www.dailykos.com), [www.walmart.com](http://www.walmart.com), [www.prospect.org](http://www.prospect.org), CNN, [www1.umn.edu](http://www1.umn.edu), [www.financialcontent.com](http://www.financialcontent.com), [www.warehouseworker.org](http://www.warehouseworker.org)

## \$2.85 Million Jury Verdict for Suicide at Missouri Jail

by Derek Gilna

ON JANUARY 18, 2013, FOLLOWING A five-day trial, a jury in the U.S. District Court for the Eastern District of Missouri returned a verdict of \$2.85 million against the City of Sullivan, finding that negligence by employees at the Sullivan County Jail had led to the suicide of detainee Karen A. Palmer. Palmer had been arrested and booked into the facility on trespassing charges in 2009, and the mother of her fiancé had advised jail officials that Palmer was suicidal and required constant observation.

Jail supervisors and guards ignored that warning, however, and Palmer used the string in the hood of her sweatshirt to hang herself. Although guards initially claimed that they had monitored the video camera in her cell every ten minutes, her body was not found for more than two hours.

After Palmer's death, her mother and other family members representing her estate sued the city and jail employees, alleging that Palmer "was in obvious need of serious medical care in that she suffered from a known depression condition and/or was an obvious substantial risk of harm to herself."

The magistrate judge handling pretrial motions granted summary judgment in favor of the city and the Sullivan police department on the plaintiffs' deliberate indifference claim, but allowed a negligence claim to proceed. One of Palmer's attorneys, Donald Schlappizzi, convinced the jury of the culpability of jail officials based in large part on video footage that showed they had failed to properly monitor Palmer's cell at the time she committed suicide.

The jury awarded \$1.3 million in actual damages and a combined total of \$1,550,000

against four individual jail employees – Jeff Rohrer, Don Reed, Shaun Hinson and Kevin Halbert – for "aggravating circumstances." Schlappizzi said Palmer's family "believes they were vindicated" by the verdict, and that the jurors "spoke as the conscience of the community." See: *Tanner v. City of Sullivan*, U.S.D.C. (E.D. Mo.), Case No. 4:11-cv-01361-NAB.

The defendants filed a motion for judg-

ment as a matter of law, or for a new trial or remittitur of the damages award, which was denied by the district court in June 2013. They appealed the verdict the following month, posting a bond in the amount of \$2.86 million. The appeal remains pending before the Eighth Circuit. ■

Additional source: [www.stltoday.com](http://www.stltoday.com)

## BRANLETTES BEAUTIES

### OUR SIMPLE POLICIES:

SPECIAL REQUESTS ARE NOT PERMITTED AND ALL MODELS ARE OF LEGAL AGE (BOP-FRIENDLY). DUE TO TREMENDOUS TIME AND COST ANSWERING LETTERS, UNLESS YOU ARE PLACING AN ORDER OR A QUESTION REGARDING YOUR ORDER, WE WILL NOT REPLY TO ANY OTHER QUESTIONS. SASE ARE REQUIRED FOR ANY INQUIRIES OR CONCERNS!

**YOU AND YOU ALONE ARE RESPONSIBLE FOR YOUR SELECTIONS BEING ALLOWED INTO YOUR FACILITY:**

KNOW YOUR INSTITUTIONS POLICIES AS TO WHAT IMAGE CONTENT IS ALLOWED. RETURNED ORDERS ARE NON-REFUNDABLE. THEY WILL BE HELD FOR 14 CALENDAR DAYS IN ORDER FOR YOU TO SEND SELF-ADDRESSED STAMPED: 3 FIRST CLASS STAMPS PER ENVELOPE, WITH A STREET ADDRESS FOR EVERY 20 PICTURES. ALL RETURNED IMAGES HELD AFTER TWO WEEKS WILL BE RESOLD AND WE WILL RETURN TO OUR STOCK.

**ALL PAYMENTS ARE BY INSTITUTIONAL CHECKS OR U.S. POSTAL SERVICE OR WESTERN UNION MONEY ORDERS.**

THESE PAYMENTS ARE PROCESSED IMMEDIATELY AND SHIPPED IN LESS THAN 3-4 WEEKS. ANY OTHER COMPANY MONEY ORDERS DELAY SHIPMENT 8-10 WEEKS OR UNTIL THAT MONEY CLEARS OUR BANK. YES, WE DEAL WITH PEOPLE THAT ARE, WHILE IN PRISON, STILL TRYING NICKEL AND DIME SCAMS...

**ALL SALES ARE FINAL! EACH CATALOG HAS 84 GORGEOUS LADIES TO CHOOSE FROM HIGH QUALITY PRINTS ON 4X6 GLOSSY PHOTO PAPER**

OUR PRICES ARE SIMPLE:

1-4999 PHOTOS = 0.45 CENTS EACH  
5000+ PHOTOS = 20% DISCOUNT  
1-9 CATALOGS: \$3.00 EACH (+SASE)  
10 CATALOGS: \$25.00+SASE (4 STAMPS)

SHIPPING & HANDLING:

DUE TO VARIOUS PRISON POLICIES REGARDING HOW MANY PICTURES CAN BE SENT IN ONE ENVELOPE, OUR POLICY IS AS FOLLOWS:

01 - 5 PHOTOS---\$1.00 PER ENVELOPE  
06 - 15 PHOTOS---\$1.50 PER ENVELOPE  
16 - 25 PHOTOS---\$2.00 PER ENVELOPE

### BRANLETTES BEAUTIES

SELECT YOUR FAVORITE:

WHITE CATALOGS (60 VOLUMES)  
BLACK CATALOGS (60 VOLUMES)  
ASIAN&LATINO CATALOGS (60 VOLUMES)  
PLEASE STATE WHAT STYLE PHOTOS:  
PROVOCATIVE POSES OR NUDE

### FREE CATALOG???

YOU READ IT RIGHT!  
JUST SEND US TWO U.S. FOREVER STAMPS AND A SELF ADDRESSED SELF ENVELOPE AND WE WILL SEND TO YOU ONE NUDE OR BOP-FRIENDLY SAMPLE CATALOG (1 PER CUSTOMER) WITH 84 GORGEOUS GIRLS IN FULL COLOR. ACT NOW AS THIS OFFER WILL NOT BE AROUND LONG!!

BRANLETTES BEAUTIES BAG A RANDOM SELECTION OF 50 OF THE RARE AND EXOTIC \*\*\*YES, FIFTY BEAUTIES ALL POSING JUST FOR YOU! \*\*\* PLUS TWO OF OUR FINEST COLOUR CATALOGS ONLY \$19.95 DID YOU READ THAT RIGHT??? \*\*\*\$19.95??? YES, ONLY \$19.95 FOR 50 OF BRANLETTES BEAUTIES (PLEASE SPECIFY NUDE OR BOP-FRIENDLY) \*\*\*PLUS \*\*\* TWO OF OUR FINEST COLOUR CATALOGS FREE (YOU PICK A VOLUME) \*\*\* OUR REGULAR SHIPPING AND HANDLING POLICIES APPLY.

**BRANLETTES**  
P.O. BOX 5765  
BALTIMORE, MD  
21282

# Recidivism Performance Measures for Private Halfway Houses in Pennsylvania

by Alex Friedmann

**I**N 2013, PENNSYLVANIA DEPARTMENT OF Corrections (DOC) officials announced they would provide financial incentives to privately-operated community corrections facilities – halfway houses – that reduce the recidivism rates of offenders released from those facilities.

The unique initiative followed a DOC report that found high recidivism rates in the state, with prisoners released from halfway houses (most of which are privately-operated) having higher rates than those released directly from prison. For example, for 2010-11 releasees, the one-year overall recidivism rate was 40.5% for those paroled to a community corrections facility but only 32.7% for those released from prison.

An average recidivism rate based on data from the report was established as a baseline, and privately-operated community corrections facilities are required to meet the baseline rate within a certain range or risk losing their contracts. Those that achieve rates at least 10% lower than the baseline will receive a financial bonus of one percent of the contract amount.

“It’s not unreasonable for us to expect them to have an impact on crime, because that’s what we’re paying them to do,” said Pennsylvania Department of Corrections Secretary John E. Wetzel.

“We want to measure performance. We want quantifiable performance,” added Kristofer Bret Bucklen, director of the DOC’s Office of Planning, Research and Statistics.

The DOC’s community corrections contracts were rebid in 2013 to include the recidivism rate performance measure provisions. According to Bucklen, the initial performance measure period was based on recidivism data for an abbreviated three-month span from December 2013 to March 2014, while future periods will cover six-month spans.

Bucklen said the state’s approximately 40 privately-operated community corrections facilities achieved an average 16.4% reduction in recidivism – although this reflected a very modest decrease in recidivism rates, as the benchmark for the initial three-month period was 12.8%, which on average dropped to 10.7% (the performance measure

benchmark for future six-month periods will be around 30%).

Nine of the facilities significantly reduced recidivism rates during the initial period and qualified to receive a contractual bonus; one facility significantly exceeded the benchmark and was placed on warning status. This indicates that given the proper incentives (financial bonuses) and disincentives (potential loss of contracts), private contractors can be motivated to meet specified standards. Future recidivism performance measures by the Pennsylvania DOC will demonstrate whether positive results are achieved on an ongoing basis.

However, one weakness of the DOC’s approach is that, according to Mr. Bucklen, recidivism rates are considered only for the benchmark periods (six months each after the initial period), but not cumulatively over

longer periods of time. That is, one-year and three-year recidivism rates for privately-operated community corrections facilities are tracked but not considered for performance measure purposes. Thus, it’s possible that the long-term recidivism rates at such facilities may in fact be higher than the corresponding benchmarks for those time periods, if offenders released from private halfway houses recidivate at higher rates over an extended period of time, but the contractors would not be penalized.

The Pennsylvania DOC is the only known state prison system that has tied performance by contractors to recidivism rates. ■

Sources: “*Recidivism Report 2013*,” Pennsylvania Dept. of Corrections, Bureau of Planning, Research and Statistics (2013); *Wall Street Journal*; Pennsylvania DOC

## Incarceration is Excusable Default in New York Housing Court Proceeding

by Mark Wilson

**O**N OCTOBER 7, 2013, THE NEW YORK City Housing Court held that a tenant who could not attend court proceedings due to incarceration was entitled to relief from a default judgment.

Otto Thompson, 57, who is disabled, had lived in his rent-controlled apartment in New York City since 1963. He paid the \$450.25 monthly rent from his SSI benefits.

In 2006 or 2007, Jose Salmon became Thompson’s roommate and remained in the apartment after Thompson was arrested and incarcerated at Rikers Island pending criminal charges in October 2008. The landlord then initiated eviction proceedings, alleging that Thompson had illegally sub-let his apartment to Salmon.

Thompson was ultimately convicted and sentenced to five years in prison. After several continuances, the Inquest Court signed a judgment of eviction on February 8, 2010, and a warrant of eviction was executed on April 30, 2010.

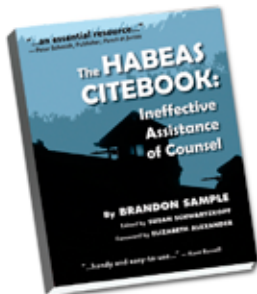
Following his release, Thompson moved for relief from default on April 13,

2013. Finding that “incarceration can be the basis for excusable default,” citing *Benado v. Antonio*, 10 A.D.2d 40, 197 N.Y.S. 2d 1 (N.Y. App. Div. 1st Dep’t 1960), the Civil Court of the City of New York granted the motion.

The court found that Thompson was denied due process and had presented an excusable default for his failure to appear. He “was incarcerated at the time of the inquest, but made many and varied attempts to respond to the proceeding, which establish that his failure to appear was not willful and that his incarceration constituted a reasonable excuse to vacate the default.”

Further, a Guardian Ad Litem (GAL) should have been appointed for Thompson because he could not adequately defend his rights under the circumstances, the court concluded, stating: “Failure to appoint a GAL will otherwise deprive the litigant of basic due process rights and an opportunity to be heard.” See: *46 Downing Street LLC v. Thompson*, Civil Court, City of New York, New York County, Case No. L & T81450/2009. ■





**The Habeas Citebook: Ineffective Assistance of Counsel**  
**Brandon Sample**  
 ISBN: 978-0-9819385-1-6  
 Paperback, 224 pages

**\$49.95**

The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an invaluable resource that identifies hundreds of cases where the federal courts have granted habeas relief to prisoners whose attorneys provided ineffective assistance of counsel.



**Prisoners' Guerrilla Handbook to Correspondence Programs in the United States and Canada, 3rd Edition**  
**Jon Marc Taylor**  
 ISBN: 978-0-9819385-0-9  
 Paperback, 224 Pages

**\$49.95**

The greatly anticipated and newly updated third edition of the Prisoner's Guerrilla Handbook to Correspondence Programs in the United States and Canada has finally arrived! Author Jon Marc Taylor's brand new version is the latest in this unique and highly successful guidebook for the prisoner-student. This invaluable tool and how-to handbook provides the reader with step-by-step instructions to find the appropriate education program for correspondence high school, vocational, paralegal, undergraduate, and graduate courses offered in the U.S. and Canada today.



**Prisoners' Self-Help Litigation Manual, 4th Edition**  
**John Boston & Dan Manville**  
 ISBN: 978-0-1953744-0-7  
 Paperback, 960 pages

**\$45.95**

Prisoners' Self-Help Litigation Manual, in its much-anticipated fourth edition, is an indispensable guide for prisoner litigants and prisoner advocates seeking to understand the rights guaranteed to prisoners by law and how to protect those rights. Clear, comprehensive, practical advice provides prisoners with everything they need to know on conditions of confinement, civil liberties in prison, procedural due process, the legal system, how to actually litigate, conducting effective legal research, and writing legal documents. It is a roadmap on how to win lawsuits.

- ☐ Habeas Citebook,  
Ineffective Assistance of Counsel  
\$49.95
- ☐ Prisoners' Guerrilla Guide to  
Correspondence Programs  
3rd edition  
\$49.95
- ☐ Prisoners' Self-Help  
Litigation Manual  
4th edition  
\$45.95

**Shipping included in all prices**

**Order by mail, phone, or on-line.** Amount enclosed \_\_\_\_\_

By: ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_ ZIP \_\_\_\_\_

PUBLISHED BY

**PRISON LEGAL NEWS**  
 Dedicated to Protecting Human Rights

PO Box 1151 • Lake Worth, FL 33460  
 Tel 561-360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

# Indiana Supreme Court Holds Agreed Court Order with Prosecutor is Binding on DOC

by Matt Clarke

THE SUPREME COURT OF INDIANA HAS held that a court order regarding whether a sex offender could be retroactively classified as a Sexually Violent Predator (SVP), and required to register as a sex offender every 90 days for life, was binding on the Indiana Department of Corrections (DOC) even though the DOC was not a party in the case.

Ronald G. Becker was convicted of Class B felony criminal deviate conduct and sentenced to six years in prison. He registered as a sex offender after his release; at that time, Indiana state law required him to register annually for ten years.

The law was later amended, instituting heightened registration requirements for SVPs. The amended law required that SVPs register every 90 days for life and made criminal deviate conduct a conviction which established SVP status as a matter of law.

After Becker was notified that he was required to register every 90 days, he petitioned the sentencing court for an order relieving him of the additional SVP obligations. The court found that SVP status did not exist when Becker was sentenced and retroactively classifying him as an SVP violated the prohibition against *ex post facto* laws. The court issued an order that Becker only needed to register annually. The prosecutor did not appeal the order.

After having registered for ten years, Becker sought clarification of the earlier order which had not specifically stated that he was exempt from registering for life on *ex post facto* grounds. Represented by the prosecutor, the state entered into an agreed order, based on the earlier court order, that stated Becker was only required to register for ten years and no longer had to register. Two weeks later, the Indiana Supreme Court rejected an *ex post facto* argument identical to Becker's in *Lemmon v. Harris*, 949 N.E.2d 803 (Ind. 2011).

Representing the DOC, the Attorney General intervened and filed a motion to have the agreed order corrected based on the Supreme Court's subsequent ruling in *Harris*. The trial court granted the DOC's motion and ordered Becker to register every 90 days for life. He appealed, arguing that

the agreed order was *res judicata* relative to the DOC's motion.

The Court of Appeals found that the agreed order was not binding on the DOC because changes in the law – not the DOC – had caused Becker to become an SVP. See: *Becker v. State*, 2012 Ind. App. Unpub. LEXIS 709 (Ind. Ct. App. 2012). Becker then appealed to the Indiana Supreme Court.

The Supreme Court held that although its ruling in *Harris* was indistinguishable from the *ex post facto* issue raised by Becker,

the agreed court order had been litigated by the prosecutor, who was an entity of “the State” with the same interest regarding the sex offender registry as the DOC. Thus, the agreed order was *res judicata* against “the State” and prevented the DOC, another entity of the state, from relitigating the issue.

Accordingly, the judgment of the trial court was reversed. Becker was represented by Schererville, Indiana attorney Mark A. Bates. See: *Becker v. State*, 992 N.E.2d 697 (Ind. 2013). ■

## Some GPS Monitoring Devices Capable of Audio Recording

by Christopher Zoukis

CIVIL LIBERTARIANS AND PRISONER advocacy groups have expressed shock and outrage at the discovery that some Global Positioning System (GPS) tracking devices, used to monitor the movement and whereabouts of many pre-trial defendants, parolees, sex offenders and other persons, function like cell phones and are capable of recording conversations without the knowledge or consent of the people wearing them – including confidential conversations with their attorneys.

The audio recording technology first came to light in Puerto Rico, when defense attorney Fermín L. Arraiza-Navas asked a client during a meeting in San Juan about the GPS ankle bracelet he was wearing as a condition of his bail.

“They speak to me through that thing,” the man said.

During a court hearing on a motion subsequently filed by Arraiza-Navas to have his client's GPS device removed, a technician for SecureAlert, the company that manufactures the monitors, revealed their true capabilities. The technician – who testified through the cell phone feature of a GPS ankle bracelet – told the court that although the device is supposed to vibrate and give an audible warning when activated, it can be turned on at will and without warning.

Proponents of the technology argue

that it enhances accountability and the ability of authorities to contact the wearer in emergencies. They point to the real-time monitoring of the devices as an essential deterrent, because here-and-now tracking allows law enforcement to be notified if the wearer violates any movement restrictions.

The wearer can also press a panic button to initiate a call to a SecureAlert support technician, and technicians can call individual GPS monitors to speak with the wearers. But while the devices emit a loud tone and the phrase “secure alert,” or vibrate when the line is opened or closed, the alert function can be bypassed. Thus, an open connection to a monitoring device can be established without the knowledge of the wearer.

Assistant San Juan District Attorney Erika Quiñones-González denied in court that the device infringes on a defendant's constitutional rights, asserting that “the supervised defendant is warned by a vibration and sound before the line is open to allow communication,” and that the device emits an audio alert when the phone call is over.

However, Arraiza-Navas pointed out that the GPS monitor emitted no alarm or signal when the courtroom communication with the SecureAlert technician ended. Further, he told the court that the system's operator said the device could be activated

“unilaterally” by SecureAlert, and that “the conversations could be heard.”

Arraiza-Navas argued that the high-tech ability of the devices oversteps the state’s right to monitor defendants. “It cannot be supported by law that in order to be set free under bail, [persons] charged with a crime have to waive their right to privacy and to keep their conversations with attorneys confidential,” he wrote. He decried the monitoring as “flagrantly unconstitutional.”

Other legal experts suggested that the ability of government officials and private companies to secretly listen in on and record private conversations violates the Fourth Amendment, the Federal Wiretap Act and various states’ constitutions.

William Ramírez, executive director of the Puerto Rico Chapter of the American Civil Liberties Union, said the right to privacy and right against self-incrimination could be infringed if defendants are not notified that their conversations can be monitored or recorded by the Pretrial Services Office or SecureAlert.

Victor A. Meléndez-Lugo, who heads the Appeals Division of the Puerto Rico Legal Aid Society, said the possibility of such

surreptitious eavesdropping is “shocking.”

“The recording or interception of phone calls in Puerto Rico constitutes a crime,” he noted. “If that is happening in Puerto Rico it has to stop happening since yesterday.”

The government’s ability “to listen and/or record the unauthorized conversations between a defendant with his or her lawyer through an electronic GPS bracelet represents the most absolute and gross infringement to that person’s constitutional rights,” added Puerto Rico legal expert Carlos E. Ramos, a professor at the Inter-American University Law School.

Other civil libertarians agreed. “If it allows eavesdropping or to record conversations, [it] is a very important issue that is worth exploring,” said Ben Wizner, senior staff attorney for the ACLU in Washington, D.C.

The issue is not a minor one; as many as 200,000 people in the U.S. are subject to some sort of electronic monitoring devices. [See: *PLN*, March 2012, p.20].

“If law enforcement agencies anywhere in this country are using such microphone-equipped GPS ankle bracelets they must, at

a minimum, make both a general disclosure of that fact to the public and our elected representatives, as well as a specific and complete disclosure of that fact to each and every person who might wear one of those ankle bracelets, as well as to his or her attorney,” stated Jerry J. Cox, president of the National Association of Criminal Defense Lawyers. ■

Sources: *www.thecrimereport.org*, *Associated Press*, *Puerto Rico Center for Investigative Reporting*

## TYPING

**SERVICES**  
Provided since 1998

**Specifically designed, with special rates for the incarcerated person.**

**Black / Color Printing and Copying**

**SEND A SASE FOR A “FREE” PRICE LIST AND MORE INFORMATION TO:**

**LET MY FINGERS DO YOUR TYPING**

**Sandra Z. Thomas (dba)**

**P O Box 4178**

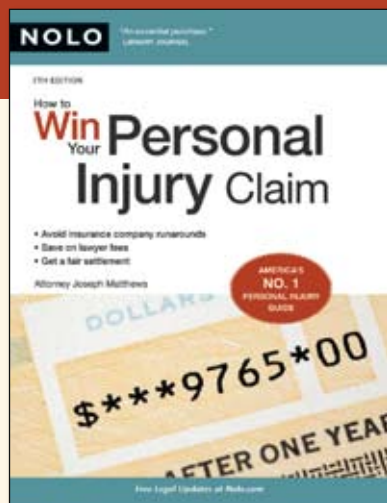
**Winter Park, Florida 32793-4178**

**Phone: 407-579-5563**

**Special Offer: \$2.00 off first order.**

**Special offer void after: 12/31/2014**

## Great Self-Help Book Deals From Prison Legal News!



### Order from Prison Legal News

Add \$6 shipping for orders under \$50

**Prison Legal News**

**PO Box 1151**

**Lake Worth, FL 33460**

**Phone: 561-360-2523**

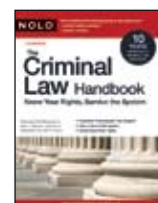
**www.prisonlegalnews.org**

### How to Win Your Personal Injury Claim

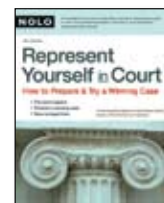
\$34.99

*How to Win Your Personal Injury Claim* shows you how to handle almost every accident situation, and guides you through the insurance claim process, step by step. Learn how to:

- protect your rights after an accident
- determine what your claim is worth
- handle a property-damage claim
- deal with uncooperative doctors, lawyers and insurance companies
- counter the special tactics insurance companies use
- prepare a claim for compensation
- negotiate a full and fair settlement
- stay on top of your case if you hire a lawyer



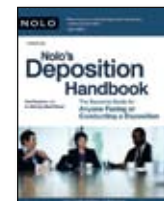
The Criminal Law Handbook  
\$39.99



Represent Yourself in Court  
\$39.99



Legal Research  
\$49.99



Nolo's Deposition Handbook  
\$34.99

**NOLO**  
**YOUR LEGAL COMPANION**



## Volunteers Help Prisoners Vote at D.C. Jail

**F**OR MOST PRISONERS IN JAIL AWAITING trial, voting is an afterthought. But volunteers at the District of Columbia jail manned the polls for the first two days of early voting in October 2012 and instructed prisoners on how to fill out ballots.

After recording prisoners' names and precincts, the volunteers flipped through stacks of absentee ballots and explained how to darken the bubbles to record their votes.

"Remember to vote both sides of the ballot," advised poll worker Arlin Budoo. Nearby sat a stack of "I Voted" stickers.

There are an estimated 700,000 people across the country sitting in jail pending trial or serving time for misdemeanors, all of whom can vote, provided – in most states – that they haven't been disenfranchised by a past felony conviction. The problem, according to Marc Mauer, executive director of The Sentencing Project, is that most jails aren't doing what volunteers in Washington, D.C. do to ensure that eligible prisoners vote.

"In the vast majority of jails there's absolutely nothing being done to make that happen," he said.

The Sentencing Project reported that about 2.5% of the total U.S. voting age population – one of every 40 adults – was disenfranchised in 48 states as of December 2010 due to a current or previous felony conviction. That amounts to around 5.8 million people nationwide.

In February 2014, U.S. Attorney General Eric H. Holder, Jr. focused national attention on voting rights for ex-offenders by framing it as a civil rights issue. Holder urged states that have not relaxed their disenfranchisement laws to grant voting rights to former prisoners to do so.

The movement has gained momentum around the nation, with nearly two dozen states loosening their voting rights statutes over the past 15 years.

Just last year in Virginia, then-Governor Robert F. McDonnell did away with the requirement that qualified non-violent felons had to apply for restoration of their voting rights. In April 2014, current Governor Terry McAuliffe announced he would automatically restore voting rights to offenders who had completed their sentences for violent drug-related crimes, and reduce the waiting period for other violent felonies from five years to three years (provided that

all court-ordered costs, fines and restitution had been paid).

The District of Columbia has made increasing efforts to help jail prisoners vote; for many decades, the District has been ahead of the states in relaxing Reconstruction-era prohibitions that exempt most current and former prisoners from the political franchise.

As a result, more types of offenders can vote in the District of Columbia than almost anywhere else, including parolees, released prisoners on probation and those who are out on bond or wearing electronic monitoring devices. Offenders in jail who are otherwise eligible can also vote; hundreds of ballots were delivered to the D.C. Jail for the last mayoral primary in April 2014.

In Washington, it's not just ex-offenders who are pushing the issue but churches, new residents to the capital city and a coalition of organizations that view voting rights for former prisoners as a social-justice priority.

A 2008 survey indicated that 60,000 D.C. residents had a criminal record, according to Charles Thornton, director of the city's newly-renamed Office on Returning Citizen Affairs. He noted that figure is certainly higher now, and estimated that one in seven adults, roughly 75,000 Washington, D.C. residents, have criminal records.

Thornton, who himself served time in the 1980s on federal drug charges, said as many as 8,000 D.C. residents are released every year from the city's jail and federal prisons combined. In addition, court records indicate that approximately 22,000 residents are under some form of correctional supervision, including probation.

An estimated 10,000 ex-offenders in D.C. were registered to vote prior to the 2008 presidential election, and according to Courtney Stewart, chairman of the Reentry Network for Returning Citizens, which organizes voter registration drives in the District, nearly 4,000 more registered before the city's 2010 mayoral election.

"It's a growing force," stated city Councilman Marion Barry, a former Washington, D.C. mayor who is also a well-known ex-offender, having served six months in federal prison for possession of crack cocaine. In the 2010 election, nearly 450 prisoners at the D.C. Jail voted by absentee ballot; in the 2012 general election, 174 prisoners at the jail and Correctional Treatment Facility in D.C. voted.

"We need more returning citizens to know they can vote," Councilman Barry said, "and more to get out and vote." ■

Sources: *USA Today*, [www.washingtonpost.com](http://www.washingtonpost.com), [www.thinkprogress.org](http://www.thinkprogress.org), [www.doc.dc.gov](http://www.doc.dc.gov), [www.felonvoting.procon.org](http://www.felonvoting.procon.org)

## Some States Refuse to Implement SORNA, Lose Federal Grants

**A**S OF AUGUST 2014, TWENTY-EIGHT states were still struggling with the costs and bureaucratic nuisance of implementing the Sex Offender Registration and Notification Act (SORNA) – also known as the Adam Walsh Act – eight years after it was passed by Congress. Another 17 states were in compliance and five have flatly refused, mostly for political or fiscal reasons.

But only one state – Nebraska – has stated a principled opposition to SORNA's lifetime registry requirement for juveniles. State Senator Amanda McGill, a member of the Nebraska legislature's Judiciary Committee, said that SORNA as currently written could force people onto the registry who don't belong there.

"We may be putting resources into people that don't need it," she said, "and possibly 'scarlet-lettering' them."

SORNA, which had a soft deadline of July 2011 for implementation, requires that states adopt certain provisions for their sex offender registries or face significant cuts in federal Byrne Justice Assistance Grants (JAG), which are used to fund local courts, crime labs, prisons and jails, and other law enforcement programs. Of the states that missed the deadline, most agreed they would apply to use JAG money to comply with SORNA in order to continue receiving the federal funds. [See: *PLN*, July 2010, p.24].

But five states – Arizona, Arkansas, California, Texas and Nebraska – have



neither complied with SORNA nor applied to use JAG funds to come into compliance, thereby electing to forfeit 10% of their JAG funding. [See, e.g.: *PLN*, Feb. 2012, p.20].

"We're hoping that in the future, some of those five will indeed apply," said Linda Baldwin, director of the U.S. Department of Justice's Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking. Not applying to use the JAG funds for compliance is "not necessarily a refusal," she added, noting that those states will have another chance to apply to use JAG funds for SORNA compliance.

Arizona, which is making a states' rights argument against implementing SORNA – an unfunded federal mandate – might change its mind depending on the future political landscape. California and Texas are citing economic reasons for their refusal to comply.

Nebraska, meanwhile, attempted to comply with SORNA in 2010 by changing its sex offender registry to categorize offenders by their convictions rather than by the individualized risk assessments the state had more thoughtfully used previously. The change not only forced Nebraska – and other states attempting to comply – to enact changes in its criminal code, but also forced many offenders who had already served their sentences to be placed on sex offender registries or increased the length of time they were required to register.

"I hadn't been in any kind of trouble since completing probation," said Daniel Konecky, a now lifetime-registered sex offender, when he testified at a hearing before Nebraska's Judiciary Committee in 2011. Konecky pleaded no contest to second-degree sexual assault of a minor after he was accused of having consensual sex with a 15-year-old girl when he was 23. His public defender assured Konecky that he faced only two or three years on probation and wouldn't be listed on the public sex offender registry.

"I feel like I'm being punished again for the rest of my life," Konecky said, "after serving my punishment and proving my worth by living righteously, being a good father and husband, and staying out of trouble."

The fiscal costs of SORNA compliance – such as expanding a state's sex offender registry and adding extra law enforcement officers for the multiple check-ins each year required of offenders – were too much for

Texas and California.

Texas estimated that its cost to implement SORNA would be at least \$38 million, while according to the National Conference of State Legislatures, the cost of losing the JAG funds would be just \$2.2 million. Tina Walker, chief of media relations for California's Emergency Management Agency, said compliance could exceed \$30 million and would result in "a less than robust sex offender registration process for the state." California would lose an estimated \$3.2 million in JAG funding.

Arizona's attitude toward SORNA compliance is based largely on its long-standing fixation on federalism. Not only do Arizona officials feel the state's sex offender registry does a better job of protecting the public than the federal government would, but – following Governor Jan Brewer's lead – the state finds itself increasingly opposed to federal initiatives simply on the grounds of states' rights.

"They agree with the importance of sharing information across states but don't necessarily think all aspects of SORNA's approach to registration are better than what they already have in place," said Elizabeth Pyke, director of government affairs at the National Criminal Justice Association. "So if implementing SORNA will make them overturn long-held policies, some states may prefer sticking with their own registry systems."

The resistance among the hold-out states forced a proposed revision to SORNA. When the law was considered for reauthorization by Congress in early 2012, legislators modified the penalty provisions for JAG funding, and the law would no longer require juveniles convicted of sex offenses to have

to register for life. Further, SORNA would allocate \$3 million in state funding for sex offender treatment for juvenile offenders. Regardless, the proposed reauthorization bill failed to pass. ■

Sources: [www.pewstates.org](http://www.pewstates.org), [www.smart.gov](http://www.smart.gov), [www.ncsl.org](http://www.ncsl.org)

### Dictionary of the Law

Thousands of clear, concise definitions.  
See page 61 for ordering information.

### \*\*\*\*7 DAY FREE TRIAL\*\*\*\*

INMATE EMAIL NEWS + SERVICES

BOP INMATES - CORRLINKS USERS

DAILY EMAILS + UPDATES ON SPORTS

NEWS, MUSIC, ENTERTAINMENT - TV

TONIGHT'S MOVIE AND SPORTS GUIDE

INFO@FORTHESCOOP.COM

P.O. BOX 90594

SAN ANTONIO, TX 78209

### NEW FRIENDS, HIGHER EDUCATION, AND EMPLOYMENT & HOUSING UPON RELEASE THROUGH WRITEAPRISONER.COM PROFILES

**Contact WriteAPrisoner.com &  
Start Looking Forward  
To Mail Call!**

AS SEEN ON

CNN, 20/20, Fox News,  
Dr. Phil, O Magazine,  
E! True Hollywood,  
and hundreds more!

**WriteAPrisoner.com...**

Simply the largest, highest ranked, &  
most visited website of its kind!

- Pen-pal Profiles are affordably priced at \$40 for the first year, \$30 for renewing year
- Features a comprehensive search that allows viewers to find your profile by age, race, location, keywords, & more - 32 search options in all
- Your new friends can email their first message to you along with a photo
- Advertises non-stop on every major search engine with thousands of websites linking back to us
- Offers free Reintegration Profiles for inmates seeking employment and housing upon release and education during incarceration
- Translated into 51 languages & geared for international search engines
- Viewers can "subscribe" to your profile to be notified when your profile is updated, blog is added, artwork is posted, poetry is added, your release is near & much more
- Pen-pals have the option of helping you with a broad range of topics using WriteAPrisoner.com's free Self-Help Series


  
**WriteAPrisoner.com**  
We'll see you at mail call!

**Get Started Today!**

Friends & family can submit your  
entire 250 word profile, photo, and  
payment for you online by visiting

[www.writeaprisoner.com/post](http://www.writeaprisoner.com/post)

Or for a FREE Brochure, Send a  
S.A.S.E. to:

  
**WriteAPrisoner.com**  
PO Box 10- PLN  
Edgewater, FL 32132 USA



Proud member of the Better Business Bureau of Central Florida & the Southeast Volusia Chamber of Commerce.  
\*Our website traffic can be independently verified at [www.quantcast.com/writeaprisoner.com](http://www.quantcast.com/writeaprisoner.com)



## News in Brief

**Brazil:** Brazilian authorities announced on January 15, 2014 that an investigation would be initiated into atrocities at the infamous Pedrinhas penitentiary. Bloody battles between rival prison gangs resulted in complaints of mass rapes of women visitors and the posting of a video depicting decapitated and tortured prisoners. In 2013, 60 prisoners died in uprisings at the facility. "The state urgently needs to investigate these crimes, restore order in the prisons, and ensure the inmates' safety," said Maria Laura Canineu, director of Brazil's Human Rights Watch.

**California:** On January 14, 2014, U.S. District Court Judge Lawrence J. O'Neill ordered a week-long suspension of federal criminal case hearings for prisoners at the Fresno County jail due to a flu outbreak. O'Neill's order noted that one prisoner who had appeared in his court had subsequently been diagnosed with H1N1 influenza and another had died of flu complications. The Fresno County Sheriff's Office quarantined hundreds of prisoners in response to the outbreak, which killed at least 10 people in the central San Joaquin Valley. The jail houses more than 2,900 prisoners; at the time of O'Neill's order, 135 of those prisoners faced federal charges.

**Florida:** A prison guard who worked at the Zephyrhills Correctional Institution was arrested on December 21, 2013 on charges of domestic battery and driving under the influence. Geoffrey Laurent Linder, 39, was charged following an incident at a local club in which he slapped his ex-wife in a dispute over her decision to bring their young daughter into a bar. Shortly after the assault, Pasco County deputies pulled Linder over and discovered he was glassy-eyed, had slurred speech and was unsteady on his feet. He reeked of alcohol and a Breathalyzer test showed his blood alcohol content to be nearly double the state's legal limit of .08. Following his arrest, Linder posted \$150 bail and was released. In 2009, he had been arrested on disorderly conduct and resisting arrest charges stemming from an incident involving Pasco County deputies.

**Florida:** Corporal James Brooks, who worked at the Naples Jail Center, was arrested on December 23, 2013 and subsequently fired after arranging to purchase a stolen laptop from a recently-released prisoner. Brooks allegedly approached a

prisoner who was nearing his release date and asked him to steal a laptop, for which Brooks would pay half the retail value. The prisoner notified jail administrators of the offer prior to his release, then worked with investigators to set up the exchange. At the time of the transaction, Brooks offered to trade prescription pills for the stolen laptop. He pleaded not guilty to felony charges of dealing in stolen property, conspiracy and drug trafficking. Previously, Brooks had been reprimanded for allowing work-release prisoners to patronize a convenience store while under his supervision.

**Florida:** Marion County jail guards Richard Smith and Dustin Lay were found not guilty of assaulting a prisoner on January 3, 2014. They had faced misdemeanor charges stemming from the beating of prisoner Donald Kizzart in the medical wing of the jail after attempting to move him to another part of the facility. A third guard, Janet Lucky, witnessed the attack and called it an excessive use of force. Two other jail workers corroborated her story, but a nurse who examined Kizzart after the incident testified that Kizzart's injuries were inconsistent with the eyewitness accounts. Defense attorneys argued that Lucky had exaggerated her statements to cause trouble for Lay.

**Guam:** Matthew Gill and Michael Martinez, two Guam prison guards fired in December 2013, denied using Tasers to torture prisoners in their custody. According to the Department of Corrections, four prisoners received treatment for Taser-related injuries, although guards are not trained on Taser use and are prohibited from carrying them. Internal Affairs investigator Jeff Limo said Gill and Martinez were terminated "based on their conduct on duty."

**Hawaii:** James "Kimo" Sanders III, a guard at the Halawa prison, appeared in federal court on January 13, 2014 to face several charges of selling meth at the facility, as well as accepting bribes for delivering contraband. Sanders was arrested in the parking lot of the prison; he is accused of distributing at least five grams of meth on November 15, 2013 and at least 50 grams of meth a week later. He was not immediately terminated by the Department of Public Safety, though Assistant U.S. Attorney Michael Nammar noted that "someone who admitted to smuggling meth and tobacco shouldn't be allowed to work at a prison

facility." Following a guilty plea, Sanders was sentenced on July 10, 2014 to four years in prison on each count, to be served concurrently.

**Illinois:** On December 30, 2013, a guard conducting a cell check at the Cook County Jail found 17-year-old Tyshawn Carter hanging from a bedsheet attached to his bunk. The suicide was the sixth at the jail in 2013. Carter had been charged as an adult with armed robbery and was scheduled for a court appearance the following week. He had not been placed on suicide watch, but a guard had performed a cell check less than seven minutes before his body was found. Cook County Sheriff's Office spokeswoman Cara Smith said of suicide prevention at the jail: "Despite all the efforts we go through, it's an imperfect science.... We do everything we can."

**Kentucky:** When Robert Vick, 42, escaped from the minimum-security Blackburn Correctional Complex on January 5, 2014, he apparently didn't bother to check the weather report. Wind chill temperatures dipped to 20 below zero the following day, and Vick eventually walked into a motel lobby and asked the clerk to call the police because he wanted to turn himself in to escape the frigid weather. He was wearing prison-issued khakis when he absconded and was treated by paramedics for exposure to the cold before being returned to Blackburn.

**Kenya:** A former death row prisoner who had hoped to receive a pardon mutilated himself after he was denied clemency. In December 2013, Francis Karuri was mopping a cellblock floor when a radio broadcast announced Kenyan President Uhuru Kenyatta's annual list of pardons. When he realized his name had not been called, Karuri cut off his own penis with a razor, then continued mopping the floor until he collapsed from blood loss. Prisoners say Karuri had struggled with depression and had recently been transferred to a section of the facility for mentally ill prisoners.

**Louisiana:** Angola Penitentiary warden Burl Cain announced that prison guard LeAngela Handy, arrested on December 24, 2013, had a "drug store" in her bra. Cain said the 42-year-old guard's undergarment was stuffed with crystal meth, cocaine, crack cocaine, marijuana, Lortab and Xanax. She also allegedly had several cigars and a cell phone secreted inside her bra as she entered

the prison. Handy was booked into the West Feliciana Parish Detention Center on multiple drug possession and misconduct charges; her bond was set at \$25,000.

**Maryland:** Prince George's County State's Attorney Angela Alsobrooks called the actions of former deputy Lamar McIntyre "reprehensible and embarrassing" after he pleaded guilty to having sex with a female prisoner. The encounter took place in a courthouse holding cell while the prisoner was waiting to be seen by a judge in June 2012. [See: *PLN*, March 2014, p.56]. McIntyre pleaded guilty, and was sentenced on February 14, 2014 to three years in prison with all but one year suspended. He also must serve 18 months of post-release probation.

**Mexico:** A statement released by Mexican authorities on January 3, 2014 detailed a bloody attack at a prison in the southern state of Guerrero. According to the statement, prosecutors did not rule out participation by prison officials in the incident, in which six men talked their way into the facility and then attacked a group of prisoners. A shootout with guards followed; four prisoners died, as well as five of the gunmen. The sixth attacker and a guard were injured during the shootout. Collusion with gang members by prison staff is common in Mexico's prison system.

**Mississippi:** In response to a riot at the Walnut Grove Correctional Facility on December 31, 2013, officials with Management and Training Corporation (MTC), the private company that runs the facility, issued a boilerplate statement that con-

firmed the incident but offered few details. Sources reported that over a dozen people were taken to local hospitals with injuries resulting from the disturbance, which appeared to be gang-related. One guard was reportedly injured and the facility placed on lockdown pending an investigation; six guards and a supervisor resigned or were fired following the incident. Nine prisoners were injured in another brawl at the MTC-operated facility on July 11, 2014, resulting in another lockdown.

**Montana:** A Mineral County juvenile probation officer was one of seven suspects arrested in a sting operation that targeted men who responded to Internet posts offering sexual favors from a fictitious 12-year-old girl. James Stewart Myers was taken into custody on December 18, 2013 after paying \$100 to an undercover officer as he arrived at the address provided in connection with the sting. He was released from the Missoula County jail on \$50,000 bail, then found dead in his home on January 13, 2014. His death was ruled a suicide.

**New Hampshire:** On December 19, 2013, eight prisoners at the Strafford County jail were charged with starting a riot. In October, they had refused to return to their cells and armed themselves with 2-by-4 boards and broom handles; officials declined to say what had caused the prisoners to rebel. Captain Robert Williams of the Strafford County Sheriff's Office told reporters that jail staff responded with "appropriate" force to quell the disturbance.

**New Jersey:** Former state prison guard Juan R. Stevens was sentenced to five years

in prison on January 8, 2014 after pleading guilty to a charge of official misconduct. As previously reported in *PLN*, Stevens, 51, posed as a police officer and extorted sex from women who advertised online as escorts. He pretended he was conducting a prostitution sting and threatened the women with arrest if they did not comply with his sexual demands. [See: *PLN*, Sept. 2013, p.56]. DNA evidence linked Stevens to at least one of the assaults. "By abusing his badge to commit these abhorrent and offensive crimes, this correction officer proved that he has no business in our state prisons, except as a prisoner," said Acting Attorney General John Hoffman.

**New York:** State prisoner Orlando Taylor pleaded not responsible by reason of mental disease or defect on January 7, 2014 for his role in killing fellow prisoner Jeffery Johnson at the Green Haven Correctional Facility in December 2012, by beating Johnson with a 10-pound weight. Dutchess County Assistant District Attorney Frank Chase said Taylor showed no remorse for the killing and gave bizarre conspiracy theories as an explanation for murdering Johnson. Judge Peter M. Forman accepted the plea and ordered Taylor to undergo further psychiatric evaluation.

**North Carolina:** On December 12, 2013, a jury found Wake County jail guard Markeith Council guilty of involuntary manslaughter in the June 2013 beating death of prisoner Shon Demetrius McClain. Council was sentenced to 90 days in the jail where he had been employed, followed by 12 to 24 months of supervised



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription!

Quarterly drawing WINS \$100! (Void in New York)  
(Last Quarter's winner from Airway Heights, WA.)

TELL YOUR FRIENDS! ACT NOW!!



PO Box 2063 • Fort Walton Beach FL. 32549

[www.InmateMagazineService.com](http://www.InmateMagazineService.com)

## Inmate Magazine Service

## News In Brief (cont.)

probation. He had engaged in a fight with McClain after they exchanged words while Council was handing out bedsheets; McClain died 13 days later due to blunt force trauma to his head and neck.

**Ohio:** Former Lorain County jail guard Marlon Taylor pleaded guilty on January 14, 2014 to a single count of deprivation of rights under color of law. He was sentenced to 18 months in prison for assaulting prisoner Jordan Sand, 18. Investigators said Taylor repeatedly struck Sand and injured him in July 2012. [See: *PLN*, Jan. 2013, p.50].

**Pennsylvania:** On November 15, 2013, an incensed Allegheny County Common Pleas trial judge, Lester G. Nauhaus, ordered a stay of the sentence he had imposed on former state Supreme Court Justice Joan Orie Melvin, after she attempted to collect credit for time served while a portion of her sentence was on appeal. Orie Melvin's defense attorneys successfully argued to

the state Superior Court that the sentence imposed by Nauhaus violated Orie Melvin's right against self-incrimination while she appealed her conviction. Nauhaus had ordered Orie Melvin to send photos of herself in handcuffs to judges throughout the state, along with a written apology for her corruption conviction. The former judge and her sister, Janine Orie, were found guilty of using judicial and legislative staff to run Orie Melvin's 2003 and 2009 election campaigns. On August 21, 2014, the Superior Court upheld other aspects of Orie Melvin's sentence, including three years of house arrest, volunteer work and a \$55,000 fine. She also must write letters of apology to other Pennsylvania jurists, but no photos are required.

**South Carolina:** Former Tyger River Correctional Institution guard Jeffrey Scott Miller pleaded guilty to multiple burglary and larceny charges, as well as misconduct in office, on January 13, 2014. Several prisoners had accused Miller of providing them with impressions of jail master keys. Upon his arrest following that investigation,

his booking fingerprints were matched to evidence collected from two 2008 home burglaries. He told Circuit Court Judge Mark Hayes that he realized he had done wrong and was sorry for his actions. Miller was sentenced to 10 years in prison on July 7, 2014, suspended to time served and four years of supervised probation.

**Tennessee:** Washington County Sheriff Ed Graybeal announced on October 15, 2013 that a tip had led to the discovery of contraband in the "pelvic region" of a prisoner reporting to the jail to serve 15 days on a previous conviction. A preliminary search found that Tasha Nicole Hale had no contraband, but a subsequent X-ray revealed a package inside her body. Hale now faces additional charges after refusing requests from deputies and medical personnel to remove the package of drugs, tobacco and chewing gum from her body cavity. It was unreported as to how the package was ultimately removed.

**Texas:** Jail guard Patrick Fitzgerald Perkins, 27, accepted a plea deal for his role in a scheme to smuggle a cell phone

## PLN Classifieds

### The VOICES.CON Newsletter – Free

Written by lifers for lifers. For info on how to receive Voices.Con monthly, send SASE to: PO Box 361, King City, CA 93930. On the web at: [VoicesDotCon.org](http://VoicesDotCon.org); Email: [Publisher@VoicesDotCon.org](mailto:Publisher@VoicesDotCon.org)

### T&A Entertainment, LLC presents

Sexy non-nude women catalog \$6.99 (\$2.00 S&H) All photos \$1 Payments: institutional check MO, MG and stamps (6 photos=1 BK) Photo reprints 55¢/5x7 \$4.49 [tandaentertainmentllc@gmail.com](mailto:tandaentertainmentllc@gmail.com) PO 10173, Newark, NJ 07101

### WINNING LEGAL BRIEFS

Example legal briefs on prisoner issues that have WON favorable decisions in state & fed courts.

For catalog send \$1.50 to W. Barron, 122 Lakeshore Dr, Unit 704-D037, Lake Harmony, PA 18624 \$1.50 credit towards your order.

### AMBLER DOCUMENT PROCESSING

Type, Design and Prepare Manuscripts for Self-Publishing Reasonable Rates! Accept all Genres! P.O. Box 938, Norwalk, CT 06852

### Assistants Online

562 S Hwy 123 Bypass #232 Seguin, TX 78155-9752 [Lit.submissions/typing/copies](mailto:Lit.submissions/typing/copies) Gifts/books/email acct/searches

### A DEGREE/ORDINATION FROM PRISON

Correspondence Courses via mail INT'L CHRISTIAN COLLEGE&SEMINARY PO BOX 530212, Debary, FL 32753-0212 Associates thru PhD credit for Life Experience \*ACCREDITED\* Tuition as Low as \$19.95 a month Send SASE for a Free Evaluation

### FREE PULP-FICTION CATALOG

Send \$3.99 USD for S&H This is a 136-page catalog with 1650+ story/novel entries Detective, Mystery, Air, Western Horror, Action, Science Fiction+ Jaguar Books, 6881 Stanton Ave #F, Buena Park, CA 90621

### INMATE SELF-HELP COURSES

Send SASE to: CORE, P.O. Box 1361, W. Sacramento, CA 95605 \$20.95ea 6 Courses Avail. Accept stamp/MO EA Course completion awarded w/ Certificate & Recognition Letter

### Best 2014 Cite Book Available

[Barkanresearch.com](http://Barkanresearch.com) has "Colossal Book of Criminal Citations" just \$19.95. 2500+ cites & more. View sample content and order today!

### IF YOU WANT THE BEST TRY EPS!

Legal Research & Forms, Internet & People Searches, Amazon Books, Erotic Photos & Stories, PenPals, Special Requests and Much More. Send SASE to: Elite Paralegal & Prisoner Services, PO Box 1717, Appleton, WI 54912

### You've tried the rest; now put us

to the test. Quicker turn around (no waiting 4 weeks for your order like with other services) lower prices. We are DFL Research Services, 2851 Chloe Drive, Converse, TX 78109 Send for information today



and drugs into the Harris County jail. On December 9, 2013, he pleaded guilty to felony drug possession and contraband charges in exchange for a lenient six-month jail term and five years' probation. The felony conviction nullifies Perkins' law enforcement certification and he will never be licensed as a jailer or allowed to work in law enforcement again. Perkins' misconduct was uncovered after prisoners identified him as the provider of a contraband cell phone. In a sting operation, a confidential informant inside the jail agreed to accept smuggled drugs from Perkins, who was found with the drugs in his possession prior to delivering them.

**Texas:** On December 3, 2013, Texas carried out yet another state-sanctioned homicide when 43-year-old Jerry Martin was executed for killing a prison guard during a brief escape in 2007. Martin had been serving a 50-year sentence for attempted capital murder when he and another prisoner fled from a work assignment. Susan Canfield, a 59-year-old guard, was on horseback and suffered fatal head injuries in the chaos and gunfire that ensued during the escape attempt. [See: *PLN*, Feb. 2010, p.50; April 2008, p.16]. Martin had requested an end to his court appeals, clearing the way for his

execution by lethal injection.

**Texas:** Justin MacDonald was sentenced on October 15, 2013 to three years in prison after escaping from the Dallas County jail because he wanted to smoke a cigarette while serving time on a probation violation. In July 2013, MacDonald walked away from the facility through several open doors in search of a nicotine fix. He was spotted outside wearing jail-issued clothing and quickly apprehended. Officials did not indicate whether MacDonald actually got to smoke a cigarette during his brief escape.

**United Kingdom:** Two prisoners on their way to court escaped from a prison van in a raid at gunpoint, and a lawyer's clerk was charged for her part in planning the dramatic breakout. Legal worker Sarah McCabe sent multiple texts to a contraband cell phone just days before prisoners Ryan MacDonald and Steve McMullen escaped from custody. She later admitted her involvement, and was sentenced to six months in jail on November 1, 2013.

**Utah:** Steven Garrett Thayer, a Washington County jail guard, was fired on October 15, 2013 after being charged with seven misdemeanor counts and one felony count of custodial sexual misconduct and

sexual relations with a prisoner at the Purgatory Correctional Facility. A spokesman for the Washington County Sheriff's Office said the department feels "very badly" when an employee violates the public's trust. Two other former Purgatory guards pleaded guilty in 2006 to having sex with prisoners at the jail.

**Washington:** In a dramatic conclusion to the "Cookie for Nookie" scandal at the Snohomish County jail [see: *PLN*, Aug. 2013, p.56], former jail guard Abner Canda, 59, was acquitted of charges related to allegations that he had traded chocolate chip cookies and other food items for sex acts with a female prisoner. Defense attorney Mark Mestel was able to discredit the police investigation that led to the charges; the jury needed only two hours to return a verdict of acquittal on December 20, 2013. According to Mestel, detectives could not prove that Canda was even working on the days the prisoner claimed the sexual acts occurred. They also failed to either corroborate or refute the woman's claims by interviewing possible witnesses to the alleged incidents. The acquittal is not expected to change the sheriff's office's decision to fire Canda, as his termination had resulted from a separate internal investigation.

#### **MIDNIGHT EXPRESS BOOKS**

THE PREFERRED & ONLY FULL TIME  
company helping inmate authors  
publish books for 10+ years.  
PO Box 69, Dept PLN,  
Berryville, AR 72616  
Midnightexpressbooks.com  
Corrlinks: MEBooks1@yahoo.com

#### **FREEDOM WRITER**

Honest, professional, yet  
affordable document production  
specializing in writs and parole  
packets. All other legal documents  
also welcome. Send SASE to:  
PO Box 821031  
Dallas, TX 75231

#### **Education Behind Bars Newsletter**

Free electronic newsletter  
for prisoners via CorrLinks.  
Add news@prisonlawblog.com  
to subscribe. The content  
is curated specifically  
for prisoners.

#### **SURROGATE SISTERS**

Celebrating 18+ Years in Business  
No Games. We Sell Photos of Sexy  
Women, Gifts for Loved Ones,  
Erotic Stories & Pen-Pal Service  
Free Info & Flyer Send SASE to:  
Surrogate Sister - PN  
PO Box 95043, Las Vegas NV 89193

#### **Prisonerinmatefamilyservice.com**

Send a SASE for a free catalog;  
PO Box 1852, Pismo Beach, CA 93448  
We buy stamps — \$7.50 a book;  
Single stamps .25 cents; Amazon  
Orders, copies of photos/artwork  
And SO much more!  
FamilyInmateSev@aol.com

#### **LOCAL PHONE NUMBERS \$2.50/MO.**

USA anywhere 5¢/min. To MX 15¢  
Great rates all over the world!  
No signup fee, no hidden fees!  
Refer new cust, 300 free mins!  
www.FreedomLine.net to sign up  
or write FreedomLine, Box 7-WCB  
C'ville IN 47331. Save BIG \$\$\$!

#### **\*\*Bottle Thoughts Gift Store\*\***

Show someone you are thinking of  
them by sending a Special Gift  
Send SASE for FREE Brochure  
PO Box 110752, Carrollton, TX 75011  
Corrlinks:sales@bottlethoughts.com  
Contact us 1-877-705-0425  
FREE Shipping on All Gift Orders

#### **Celebrity Photos For Sale:**

Send self addressed stamped  
envelope for lists. Name stars  
you would like to order photos of.  
Start your collection today!  
Photoworld-PLN  
PO Box 401016  
Las Vegas, NV 89140

#### **How to get girls while in prison**

"The best techniques & methods to  
get more girls than u can handle  
even though u are locked up."  
Send SASE for your free report:  
The Convict's Education Group  
19141 Stone Oak Pkwy #104  
Dept.: A. San Antonio, TX 78258

**West Virginia:** Former prison guard Amy M. Jones, 36, was fired from her job at the Pruntytown Correctional Center and subsequently pleaded guilty to charges of sexual intercourse with an incarcerated person. She was sentenced on October 16, 2013 to three years of probation and will be required to register as a sex offender for 10 years. Both the prosecutor and defense counsel recommended a downward departure from a prison term of one-to-five

years, because Jones had no prior criminal history.

**Wisconsin:** A contracted alcohol and drug counselor at the Jackson Correctional Institution was charged on January 9, 2014 with smuggling at least two cell phones into the facility in exchange for bribes. Karen Robertson, 52, admitted to smuggling the phones and was charged with two felony counts of delivering illegal articles to prisoners. Following her arrest, Robertson was freed on a \$5,000 signature bond.

**Zimbabwe:** Zimbabwe Lawyers for Human Rights, an advocacy organization,

said in a statement released on December 3, 2013 that more than 100 prisoners had died in 2013 due to food shortages caused by lack of funding. The Zimbabwean prison system requires about \$1.2 million to provide food rations for nearly 18,500 prisoners, but only received around \$300,000. During the height of Zimbabwe's economic crisis in 2009, the International Committee of the Red Cross distributed food, blankets and soap to prisoners in an attempt to stave off hunger and disease outbreaks, yet more than half of the nation's prison population died of starvation. ■

## **Criminal Justice Resources**

### **ACLU National Prison Project**

Handles state and federal conditions of confinement claims affecting large numbers of prisoners. Publishes the NPP Journal (available online at: [www.aclu.org/national-prison-project-journal-fall-2011](http://www.aclu.org/national-prison-project-journal-fall-2011)) and the Prisoners' Assistance Directory (write for more information). Contact: ACLU NPP, 915 15th St. NW, 7th Fl., Washington, DC 20005 (202) 393-4930. [www.aclu.org/prisons](http://www.aclu.org/prisons)

### **Amnesty International**

Compiles information about prisoner torture, beatings, rape, etc. to include in reports about U.S. prison conditions; also works on death penalty issues. Contact: Amnesty International, 5 Penn Plaza, New York NY 10001 (212) 807-8400. [www.amnestyusa.org](http://www.amnestyusa.org)

### **Center for Health Justice**

Formerly CorrectHELP. Provides information related to HIV in prison – contact them if you are not receiving proper HIV medication or are denied access to programs due to HIV status. Contact: CHJ, 900 Avila Street, Suite 102, Los Angeles, CA 90012. HIV Hotline: (214) 229-0979 (collect calls from prisoners OK). [www.centerforhealthjustice.org](http://www.centerforhealthjustice.org)

### **Centurion Ministries**

Works to exonerate the wrongfully convicted, in both cases involving DNA evidence and those that do not. Centurion only takes 1-2 new cases a year involving actual innocence. They do not consider accidental death or self-defense murder cases, he said/she said rape cases, or child abuse or child sex abuse cases unless there is physical evidence. All case inquiries must be from the prisoner involved, in writing. Contact: Centurion Ministries, 221 Witherspoon Street, Princeton, NJ 08542 (609) 921-0334. [www.centurionministries.org](http://www.centurionministries.org)

### **Critical Resistance**

Seeks to build an international movement to abolish the Prison Industrial Complex, with offices in Florida, California, New York, Texas and Louisiana. Publishes The Abolitionist newsletter. Contact: Critical Resistance, 1904 Franklin Street #504, Oakland, CA 94612 (510) 444-0484. [www.criticalresistance.org](http://www.criticalresistance.org)

### **The Exoneration Project**

The Exoneration Project is a non-profit organization dedicated to working to free prisoners who were wrongfully convicted. The Project represents innocent individuals in post-conviction legal proceedings; typical cases involve DNA testing, coerced confessions, police misconduct, the use of faulty evidence, junk science and faulty eyewitness testimony, and ineffective assistance of counsel claims. Contact: The Exoneration Project, 312 North May Street, Suite 100, Chicago, Illinois 60607 (312) 789-4955. [www.exonerationproject.org](http://www.exonerationproject.org)

### **Family & Corrections Network**

Primarily provides online resources for families of prisoners related to parenting, children of prisoners, prison visitation, mothers and fathers in prison, etc. Contact: F&CN, 93 Old York Road, Suite 1 #510, Jenkintown, PA 19046 (215) 576-1110. [www.fcnetwork.org](http://www.fcnetwork.org)

### **FAMM**

FAMM (Families Against Mandatory Minimums) publishes the FAMMgram three times a year, which includes information about injustices resulting from mandatory minimum laws with an emphasis on federal laws. Recommended donation of \$10 for a subscription. Contact: FAMM, 1612 K Street NW #700, Washington, DC 20006 (202) 822-6700). [www.famm.org](http://www.famm.org)

### **The Fortune Society**

Provides post-release services and programs for prisoners in the New York City area and occasionally publishes Fortune News, a free publication for prisoners that deals with criminal justice issues, primarily in New York. Contact: The Fortune Society, 29-76 Northern Blvd., Long Island City, NY 11101 (212) 691-7554. [www.fortunesociety.org](http://www.fortunesociety.org)

### **Innocence Project**

Provides advocacy for wrongly convicted prisoners whose cases involve DNA evidence and are at the post-conviction appeal stage. Maintains an online list of state-by-state innocence projects. Contact: Innocence Project, 40 Worth St., Suite 701, New York, NY 10013 (212) 364-5340. [www.innocenceproject.org](http://www.innocenceproject.org)

### **Just Detention International**

Formerly Stop Prisoner Rape, JDI seeks to end sexual violence against prisoners. Provides counseling resources for imprisoned and released rape survivors and activists for almost every state. Contact: JDI, 3325 Wilshire Blvd. #340, Los Angeles, CA 90010 (213) 384-1400. [www.justdetention.org](http://www.justdetention.org)

### **Justice Denied**

Although no longer publishing a print magazine, Justice Denied continues to provide the most comprehensive coverage of wrongful convictions and how and why they occur. Their content is available online, and includes all back issues of the Justice Denied magazine and a database of more than 3,000 wrongly convicted people. Contact: Justice Denied, P.O. Box 68911, Seattle, WA 98168 (206) 335-4254. [www.justicedenied.org](http://www.justicedenied.org)

### **National CURE**

Citizens United for Rehabilitation of Errants (CURE) is a national organization with state and special interest chapters that advocates for rehabilitative opportunities for prisoners and less reliance on incarceration. Publishes the CURE Newsletter. \$2 annual membership for prisoners. Contact: CURE, P.O. Box 2310, National Capitol Station, Washington, DC 20013 (202) 789-2126. [www.curenational.org](http://www.curenational.org)

### **November Coalition**

Publishes the Razor Wire, a bi-annual newsletter that reports on drug war-related issues, releasing prisoners of the drug war and restoring civil rights. A subscription is \$10 for prisoners and \$30 for non-prisoners. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 684-1550. [www.november.org](http://www.november.org)

### **Prison Activist Resource Center**

PARC is a prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, able-ism, heterosexism and classism, specifically within the Prison Industrial Complex. PARC produces a free resource directory for prisoners, and supports activists working to expose and end the abuses of the Prison Industrial Complex and mass incarceration. Contact: PARC, P.O. Box 70447, Oakland, CA 94612 (510) 893-4648. [www.prisonactivist.org](http://www.prisonactivist.org)

# Prison Legal News Book Store

Fill in the boxes next to each book you want to order, indicating the quantity and price. Enter the Total on the Order Form on the next page.  
**FREE SHIPPING on all book orders OVER \$50 (effective 8-1-2014 until further notice). \$6.00 S/H applies to all other book orders.**

## SUBSCRIBE TO PLN FOR 4 YEARS AND CHOOSE ONE BONUS!

1. SIX (6) FREE ISSUES FOR 54 TOTAL! OR
2. PRISON PROFITEERS (A \$24.95 VALUE!) OR
3. THE HABEAS CITEBOOK (A \$49.95 VALUE!)

**Prison Profiteers**, edited by Paul Wright and Tara Herivel, 323 pages. \$24.95. This is the third book in a series of Prison Legal News anthologies that examines the reality of mass imprisonment in America. *Prison Profiteers* is unique from other books because it exposes and discusses who profits and benefits from mass imprisonment, rather than who is harmed by it and how. 1063

**The Habeas Citebook: Ineffective Assistance of Counsel**, by Brandon Sample, PLN Publishing, 200 pages. \$49.95. This is PLN's second published book, written by federal prisoner Brandon Sample, which covers ineffective assistance of counsel issues in federal habeas petitions. Includes hundreds of case citations! 1078

**Prison Nation: The Warehousing of America's Poor**, edited by Tara Herivel and Paul Wright, 332 pages. \$35.95. PLN's second anthology exposes the dark side of the 'lock-em-up' political agenda and legal climate in the U.S. 1041

**The Ceiling of America, An Inside Look at the U.S. Prison Industry**, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. \$22.95. PLN's first anthology presents a detailed "inside" look at the workings of the American justice system. 1001

**Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada**, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, PLN Publishing, 221 pages. \$49.95. Written by Missouri prisoner Jon Marc Taylor, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, paralegal and college courses by mail. 1071

**The Criminal Law Handbook: Know Your Rights, Survive the System**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 608 pages. \$39.99. Explains what happens in a criminal case from being arrested to sentencing, and what your rights are at each stage of the process. Uses an easy to understand question-and-answer format. 1038

**Represent Yourself in Court: How to Prepare & Try a Winning Case**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 528 pages. \$39.99. Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. The authors explain what to say in court, how to say it, etc. 1037

**The Merriam-Webster Dictionary, New Edition**, 939 pages. \$8.95. This paperback dictionary is a handy reference for the most common English words, with more than 65,000 entries. 2015

**The Blue Book of Grammar and Punctuation**, by Jane Straus, 110 pages. \$19.99. A guide to grammar and punctuation by an educator with experience teaching English to prisoners. 1046

**Legal Research: How to Find and Understand the Law**, by Stephen Elias and Susan Levinkind, 568 pages. \$49.99. Comprehensive and easy to understand guide on researching the law. Explains case law, statutes and digests, etc. Includes practice exercises. 1059

**Deposition Handbook**, by Paul Bergman and Albert Moore, Nolo Press, 352 pages. \$34.99. How-to handbook for anyone who conducts a deposition or is going to be deposed. 1054

**Criminal Law in a Nutshell**, by Arnold H. Loewy, 5th edition, 387 pages. \$43.95. Provides an overview of criminal law, including punishment, specific crimes, defenses & burden of proof. 1086

## SUBSCRIBE TO PLN FOR 3 YEARS AND CHOOSE ONE BONUS!

1. FOUR (4) FREE ISSUES FOR 40 TOTAL! OR
2. PROTECTING YOUR HEALTH AND SAFETY (A \$10.00 VALUE!)

**Protecting Your Health and Safety**, by Robert E. Toone, Southern Poverty Law Center, 325 pages. \$10.00. This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how to enforce your rights, including through litigation. 1060

**Spanish-English/English-Spanish Dictionary**, 2nd ed., Random House. \$15.95. Spanish-English and English-Spanish. 60,000+ entries from A to Z; includes Western Hemisphere usage. 1034a

**Writing to Win: The Legal Writer**, by Steven D. Stark, Broadway Books/Random House, 283 pages. \$19.95. Explains the writing of effective complaints, responses, briefs, motions and other legal papers. 1035

**Actual Innocence: When Justice Goes Wrong and How to Make it Right**, updated paperback ed., by Barry Scheck, Peter Neufeld and Jim Dwyer, 403 pages. \$17.99. Describes how criminal defendants are wrongly convicted. Explains DNA testing and how it works to free the innocent. Devastating critique of police and prosecutorial misconduct. 1030

**All Alone in the World: Children of the Incarcerated**, by Nell Bernstein, 303 pages. \$19.95. Award-winning journalist Nell Bernstein takes an intimate look at the effects incarceration has on imprisoned parents and their children. 2016

**Everyday Letters for Busy People**, by Debra Hart May, 287 pages. \$21.99. Hundreds of sample letters that can be adapted for most any purpose, including letters to government agencies and officials. Has numerous tips for writing effective letters. 1048

**Roget's Thesaurus**, 717 pages. \$8.95. Helps you find the right word for what you want to say. 11,000 words listed alphabetically with over 200,000 synonyms and antonyms. Sample sentences and parts of speech shown for every main word. Covers all levels of vocabulary and identifies informal and slang words. 1045

**Beyond Bars, Rejoining Society After Prison**, by Jeffrey Ian Ross, Ph.D. and Stephen C. Richards, Ph.D., Alpha, 240 pages. \$14.95. *Beyond Bars* is a practical and comprehensive guide for ex-convicts and their families for managing successful re-entry into the community, and includes information about budgets, job searches, family issues, preparing for release while still incarcerated, and more. 1080

**Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A.**, by Mumia Abu Jamal, City Lights Publishers, 280 pages. \$16.95. In *Jailhouse Lawyers*, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned-advocates who have learned to use the court system to represent other prisoners. 1073

**With Liberty for Some: 500 Years of Imprisonment in America**, by Scott Christianson, Northeastern University Press, 372 pages. \$18.95. The best overall history of the U.S. prison system from 1492 through the 20th century. A must-read for understanding how little things have changed in U.S. prisons over hundreds of years. 1026

**Complete GED Preparation**, by Steck-Vaughn, 922 pages. \$24.99. This useful handbook contains over 2,000 GED-style questions to thoroughly prepare students for taking the GED test. It offers complete coverage of the revised GED test with new testing information, instructions and a practice test. 1099

**\* ALL BOOKS SOLD BY PLN ARE SOFTCOVER / PAPERBACK \***

**Hepatitis and Liver Disease: What You Need to Know**, by Melissa Palmer, MD, 457 pages. **\$19.99.** Describes symptoms & treatments of hepatitis B & C and other liver diseases. Includes medications to avoid, what diet to follow and exercises to perform, plus a bibliography. 1031 ☐

**Arrested: What to Do When Your Loved One's in Jail**, by Wes Denham, 240 pages. **\$16.95.** Whether a defendant is charged with misdemeanor disorderly conduct or first-degree murder, this is an indispensable guide for those who want to support family members, partners or friends facing criminal charges. 1084 ☐

**Prisoners' Self-Help Litigation Manual**, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 960 pages. **\$39.95.** The premiere, must-have "Bible" of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Highly recommended! 1077 ☐

**How to Win Your Personal Injury Claim**, by Atty. Joseph Matthews, 7th edition, NOLO Press, 304 pages. **\$34.99.** While not specifically for prison-related personal injury cases, this book provides comprehensive information on how to handle personal injury and property damage claims arising from accidents. 1075 ☐

**Sue the Doctor and Win! Victim's Guide to Secrets of Malpractice Lawsuits**, by Lewis Laska, 336 pages. **\$39.95.** Written for victims of medical malpractice/neglect, to prepare for litigation. Note that this book addresses medical malpractice claims and issues in general, not specifically related to prisoners. 1079 ☐

**Advanced Criminal Procedure in a Nutshell**, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **\$43.95.** This text is designed for supplemental reading in an advanced criminal procedure course on the post-investigation processing of a criminal case, including prosecution and adjudication. 1090 ☐

**Our Bodies, Ourselves**, by The Boston Women's Health Book Collective, 944 pages. **\$26.00.** This book about women's health and sexuality has been called "America's best-selling book on all aspects of women's health," and is a great resource for women of all ages. 1082 ☐

**Arrest-Proof Yourself**, by Dale Carson and Wes Denham, 288 pages. **\$14.95.** This essential "how not to" guide written by an ex-cop explains how to act and what to say when confronted by the police to minimize the chances of being arrested and avoid additional charges. Includes information on basic tricks that police use to get people to incriminate themselves. 1083 ☐

**Nolo's Plain-English Law Dictionary**, by Gerald N. Hill and Kathleen T. Hill, 496 pages. **\$29.99.** Find terms you can use to understand and access the law. Contains 3,800 easy-to-read definitions for common (and not so common) legal terms. 3001 ☐

**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFave, 7th edition, 603 pages. **\$43.95.** Intended for use by law students, this is a succinct analysis of constitutional standards of major significance in the area of criminal procedure. 1085 ☐

**A Dictionary of Criminal Law Terms** (Black's Law Dictionary® Series), by Bryan A. Garner, 768 pages. **\$33.95.** This handbook contains police terms such as preventive detention and protective sweep, and phrases from judicial-created law such as independent-source rule and open-fields doctrine. A good resource to help navigate your way through the maze of legal language in criminal cases. 1088 ☐

**Win Your Lawsuit: Sue in CA Superior Court without a Lawyer**, by Judge Roderic Duncan, 445 pages (4th edition 2010). **\$39.99.** This plain-English guide shows you how to prepare a complaint, file and serve papers, participate in settlement negotiations, present a case and much more. The 4th edition has been revised to reflect recent court procedures and includes updated forms. 2014 ☐

#### Subscription Rates

	1 year	2 years	3 years	4 years
<b>Prisoners</b>	<b>\$30</b>	<b>\$ 60</b>	<b>\$ 90</b>	<b>\$120</b>
<b>Individuals</b>	<b>\$35</b>	<b>\$ 70</b>	<b>\$105</b>	<b>\$140</b>
<b>Professionals</b>	<b>\$90</b>	<b>\$180</b>	<b>\$270</b>	<b>\$360</b>

(Attorneys, agencies, libraries)

#### Subscription Bonuses

- 2 years** - 2 bonus issues for 26 total issues
- 3 years** - 4 bonus issues (40 total) or a bonus book as listed on pg. 61
- 4 years** - 6 bonus issues (54 total) or a bonus book as listed on pg. 61

(All subscription rates and bonus offers are valid as of 8-1-2014)



Purchase with Visa, MasterCard, AmEx or Discover by phone: **561-360-2523**

Or buy books and subscriptions online: **www.prisonlegalnews.org**



#### Mail Payment and Order to:

Prison Legal News  
P.O. Box 1151  
Lake Worth, FL 33460

All purchases must be pre-paid. Prisoners can pay with new first-class stamps (strips or books only, no single stamps) or pre-stamped envelopes, if allowed by institutional policies.

Please Change my Address to what is entered below ☐

#### Mail Order To:

Name: \_\_\_\_\_  
DOC #: \_\_\_\_\_  
Suite/Cell: \_\_\_\_\_  
Agency/Inst: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_

#### Subscribe to Prison Legal News

\$ Amount

- 6 month subscription (prisoners only) - \$18 \_\_\_\_\_
- 1 yr subscription (12 issues) \_\_\_\_\_
- 2 yr subscription (2 bonus issues for 26 total!) \_\_\_\_\_
- 3 yr sub (write below which FREE book you want)  
or 4 bonus issues for 40 issues total! \_\_\_\_\_
- 4 yr sub (write below which FREE book you want)  
or 6 bonus issues for 54 issues total! \_\_\_\_\_
- Single back issue or sample copy of PLN - \$5.00 each \_\_\_\_\_

#### Books Orders

(No S/H charge on 3 & 4-year

subscription free books OR book orders OVER \$50!) Qty.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**Add \$6.00 S/H to BOOK ORDERS under \$50**  
(PLN subs do not count towards \$50 for free S/H for book orders)  
**FL residents ONLY add 6% to Total Book Cost**  
**TOTAL Amount Enclosed:** \_\_\_\_\_

\* **NO REFUNDS on PLN subscription or book orders after orders have been placed.** \*

\* **We are not responsible for incorrect addresses or address changes after orders have been placed.** \*



# States Renewing Their Prison Phone Contracts

*As state DOCs renew or rebid their prison phone contracts, you can help urge them to lower intrastate phone rates and eliminate commission kickbacks!*

*The Campaign for Prison Phone Justice needs your help in:*

**\*\*\*\* Arizona, Iowa, North Dakota \*\*\*\***

The Departments of Corrections in the above states are in the process of re-bidding or renewing their prison phone contracts. Most DOCs receive a commission (kickback) on revenue generated from calls made by prisoners, which results in excessively high phone rates. Although the FCC voted last year to cap the costs of interstate (long distance) prison calls, which went into effect on February 11, 2014, the order does not apply to intrastate (in-state) calls. An estimated 85% of prison phone calls are in-state. This is an opportunity to ask DOCs to forgo commissions and ensure their new prison phone contracts are based on the lowest cost to those who pay for the calls – mostly prisoners' families.

## **Take Action NOW! Here's What YOU Can Do!**

Ask your family members and friends to write, email, call and fax the DOC and the governor's office (addresses and contacts are listed below), requesting that the DOC: 1) forgo commission payments when re-bidding or renewing its prison phone contract, and 2) base the new contract on the lowest calling costs. Lower prison phone rates should apply not just to long distance calls but also to in-state calls. For a sample letter or to easily send an email, visit the Campaign for Prison Phone Justice's website and click on the "Take Action" tab:

**[www.phonejustice.org](http://www.phonejustice.org)**

### **Prison phone contract information & Contacts:**

**Arizona:** Receives a 53.70% kickback; existing contract expires on 10-17-2014. Charges \$5.00 for a 15-minute collect intrastate and \$1.84 for a collect local call. **Contacts:** Arizona DOC, Director Charles Ryan, 1601 West Jefferson St., Phoenix, AZ 85007; phone: 602-542-5225, fax: 602-364-0601, email: [directoroffice@azcorrections.gov](mailto:directoroffice@azcorrections.gov). Governor Jan Brewer, State Capitol, 1700 West Washington, Phoenix, AZ 85007; phone: 602-542-4331, fax: 602-542-7601, email: All emails to Governor Brewer must be made through this website: [www.azgovernor.gov/contact.asp](http://www.azgovernor.gov/contact.asp)

**Iowa:** Receives \$650,900 in annual kickbacks; existing contract expires on 10-8-2014. Charges \$4.85 for a 15-minute collect intrastate call and \$2.00 for a collect local call. **Contacts:** Iowa DOC, Director John R. Baldwin, 510 E. 17<sup>th</sup> Street, Des Moines, IA 50319-0001; phone: 515-725-5701, fax: 515-725-5799, email: [john.baldwin@iowa.gov](mailto:john.baldwin@iowa.gov). Governor Terry E. Branstad, State Capitol, 1007 E. Grand Ave, Des Moines, IA 50319; phone: 515-281-5211, fax: 515-281-6611, email: [margaret.hough@iowa.gov](mailto:margaret.hough@iowa.gov)

**North Dakota:** Receives a 40% kickback; existing contract expires on 10-31-2014. Charges \$6.00 for a 15-minute collect intrastate call. **Contacts:** North Dakota DOC, Director Leann Bertsch, 3100 Railroad Avenue, Bismarck, ND 58502-1898; phone: 701-328-6362, fax: 701-328-6651, email: [lebertsc@nd.gov](mailto:lebertsc@nd.gov). Governor Jack Dalrymple, State Capitol, 600 E. Blvd Ave., Bismarck, ND 58505-0001; phone: 701-328-2200, fax: 701-328-2205, email: [governor@nd.gov](mailto:governor@nd.gov)



## Prison Legal News

PO Box 1151  
Lake Worth FL 33460

Change Service Requested

Non-Profit Org.  
U.S. Postage  
PAID  
Portland OR  
Permit No. 3142

### Subscription Renewal

Subscriptions expire after the issue shown on the label is mailed. For example, if the label says: EXPIRES 02/2015, then the subscription expires after the February 2015 issue is mailed. Please renew at least 2 months before the expiration date. IF THE LABEL SAYS **EXPIRES: 09/2014** THIS IS YOUR LAST ISSUE. Please renew immediately to avoid missing any issues.

### Change of Address

If you move or are transferred, please notify PLN as soon as possible so your issues can be mailed to your new address! PLN only accepts responsibility for sending an issue to the address provided at the time an issue is mailed!



# PRISONLEGALNEWS.org

**Dedicated to Protecting Human Rights**

>>FREE Data Search |

Decisions

Investigations

Audits

Publications

Cases

Verdicts

Settlements

**If you need to know about prisons and jails or are litigating a detention facility case, you can't afford not to subscribe to our website!**

**Online subscribers get unlimited, 24-hour a day access to the website and its content!**

 **Sign up for PLN's FREE listserv to receive prison and jail news and court rulings by e-mail.**

- ▶ PLN's website offers all issues of PLN in both searchable database and PDF formats. Issues are indexed and posted as soon as they go to press.
- ▶ Publications section has numerous downloadable government reports, audits and investigations from around the country.
- ▶ Full text decisions of thousands of court cases, published and unpublished.
- ▶ All content is easy to print for downloading and mailing to prisoners.
- ▶ Most complete collection of prison and jail related verdicts and settlements anywhere.
- ▶ Order books, print subscriptions and make donations on line.

- ▶ Brief bank with a wide assortment of winning motions, briefs, complaints and settlements.
- ▶ Links to thousands of prison, jail, criminal justice and legal websites around the world.
- ▶ Thousands of articles and cases, all fully indexed by more than 500 subjects, searchable by case name, case year, state of origin, court, author, location, case outcome, PLN issue and key word search.
- ▶ Search free, pay only if you find it!
- ▶ The highest quality, most comprehensive prison litigation news and research site in the world.

**Affordable rates to meet your budget  
\$19.95 per month • \$149.95 per year**

**Subscribe to Prison Legal News Online! <http://www.prisonlegalnews.org>**



## In Washington State Prisons, Negligent Health Care Turns Illness into a Death Sentence

*Ricardo Cruz Mejia went to prison a murderer, he left a victim.*

*by Rick Anderson*

**R**ICARDO CRUZ MEJIA'S FINAL DAYS began with a stomach problem. It was October 2010. After the 26-year-old Walla Walla State Penitentiary prisoner discovered blood in his stool, he signed in at the prison infirmary. A test and exam turned up a severely inflamed colon. The onetime Latino gang member from Skagit County, doing 34 years for seven felonies including murder, was given hydrocortisone enemas and tabs of prednisone, used to treat inflammation. The prison medical staff also gave him sulfasalazine for abdominal pain.

In November, Mejia, a stocky, tattooed prisoner with a closely shaved head, began

to experience other symptoms – headaches, sore throat, then vomiting. He also had begun to develop a rash, for which he was given penicillin, though it didn't seem to help.

In the ensuing days, he became a familiar figure to infirmary nurses. From December through the first week of January 2011, he showed up at the infirmary 14 times. Nurses doled out a topical corticosteroid for skin inflammation and tried other drugs to ease his symptoms. Still, none alleviated the persistent, painful irritations and stomach problems.

On January 10, 2011, he arrived to tell medical staffers his sore throat was killing him – “It hurts to breathe,” he said, according to notes in his medical record. Staffers seemed stumped. His vital signs weren't taken and no new treatment was offered.

Mejia returned the next day and announced he was having what he called “a medical emergency.” In addition to his earlier symptoms, he had developed fever blisters, sore joints and rectal pain. His pulse was racing, his blood pressure rising. He had been unable to eat for three days, he said.

Prison physician Barry Kellog, who examined him, did not find Mejia in any acute distress and prescribed more prednisone and sulfasalazine. He'd later recall he saw Mejia only briefly, and was not informed by the nurse who was assisting him and had treated Mejia earlier that the patient turned out to be allergic to sulfasalazine. Nor did she tell him, Kellog recalled, that Mejia had a rash and had been diagnosed with colitis, an inflamed colon.

On January 13, 2011 at 8 a.m., Mejia

was back complaining of similar problems, and a new one – blisters on his anus. He was examined and given an oral antifungal.

The next day, Mejia returned – this time with painful mouth and rectal ulcers and severe abdominal pain. He'd been unable to have a bowel movement for four days, he said. He was given hydrocortisone, milk of magnesia and an anesthetic. A nurse provided moistened gauzes to place on the painful skin ulcers.

Nurse Allison Oleson would later say that it was clear Mejia was “quite sick” that day. “When this kid came into the exam room, he was clearly in distress.” She said she called on Kenneth Moore, a physician's assistant, to take a look at Mejia. (Known as PAs, the assistants are not accredited doctors but practice medicine on a team under the supervision of physicians and surgeons; typically they are formally educated to diagnose illness or injury and provide general treatment).

But Moore, like the earlier doctor, did not examine Mejia, Oleson recalled. He didn't even see him. During a phone chat with the nurse, he ordered Lidocaine, a topical pain-numbing gel.

Mejia returned to his cell. But his symptoms grew worse. At 4:30 the next morning, January 15, a medical staffer who visited Mejia in his cell undertook a brief examination and told him to come into the infirmary a few hours later.

When the prisoner showed up at 7:30 a.m., he was seated uncomfortably in a wheelchair. He was unable to sit and was experiencing diarrhea. His pulse, temperature and blood pressure were all rising and

### INSIDE

CCA Loses TX Public Records Case	9
From the Editor	10
Women Prisoners in Solitary	12
How Courts View Accreditation	18
JustLeadershipUSA	22
VA Prison Medical Care Suit	26
\$8.15 Million in NY Jail Death	32
Jail Video Visits Considered in Dallas	34
Ruling in Ad Seg Lighting Case	40
ICE Limits Solitary Confinement	44
“Ban the Box” Movement Spreads	46
CA Prison Medical Costs Soar	50
News in Brief	55



## **TAKE ACTION ON PRISON PHONE RATES – CONTACT THE FCC NOW!**

After nearly a decade, the Federal Communications Commission (FCC) took action in 2013 and issued an order, effective February 11, 2014, that capped the cost of interstate (long distance) prison phone rates. This led to an almost 80% decrease in interstate phone costs in some states, and those costs are now capped at \$.25/minute for collect calls and \$.21/minute for debit and prepaid calls. On September 25, 2014, the FCC indicated that it plans to take further action to reduce prison phone rates, including in-state (intrastate) rates – which still remain high in many jurisdictions. In fact, in-state phone rates are now higher than long distance rates in many cases.

You can submit a public comment to the FCC; even if you have sent comments before, you can resubmit them or submit new information. Please write to the FCC as soon as possible, addressing any of the following topics:

- **Positive Impact of the FCC Order Reducing Interstate Calls:** Let the FCC know how the rate caps on interstate prison phone calls have resulted in lower costs or helped you and your family!
- **Negative Impact of Intrastate Phone Calls:** While the FCC capped long distance phone rates, the order did not apply to in-state calls, which make up 85% of all calls from prisons and jails. How much do you or your family pay for in-state phone calls? The FCC needs to hear about this issue so they know why intrastate prison phone rates need to be reduced, too.
- **Ancillary Fees:** Do you or your family have to pay extra fees (ancillary fees) to make or accept calls, such as fees to set up, add money to or cancel a prepaid or debit prison phone account? Are you charged fees but were not told about them before they were charged? How much are these fees? Have they increased?
- **Importance of Prison Phone Reforms:** Tell the FCC why it is important to enact permanent reform of prison phone rates for interstate and in-state calls, including rate caps and the elimination of “commission” payments to corrections agencies. Also, the FCC needs details about fee-based video visitation services.

*Comments can be sent by mail to:*

**Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW; Room TW-B204  
Washington, DC 20554**

Address the letter “Dear Secretary Dortch,” and please speak from your personal experience. You must state the following in your letter: “This is a public comment for **WC Docket Number 12-375**.” Note that your comment will be made part of the public docket.

People with Internet access can register their comments online with the FCC, by entering Proceeding Number **12-375** and uploading a document at this address: <http://apps.fcc.gov/ecfs/upload/display.action?z=nyy6z>

For more information about the fight to reduce prison phone rates, visit the Campaign for Prison Phone Justice:

**[www.phonejustice.org](http://www.phonejustice.org)**



## Prison Legal News

*a publication of the  
Human Rights Defense Center*  
[www.humanrightsdefensecenter.org](http://www.humanrightsdefensecenter.org)

### EDITOR

Paul Wright

### MANAGING EDITOR

Alex Friedmann

### COLUMNISTS

Michael Cohen, Kent Russell,  
Mumia Abu Jamal

### CONTRIBUTING WRITERS

Matthew Clarke, John Dannenberg,  
Derek Gilna, Gary Hunter,  
David Reutter, Mark Wilson,  
Joe Watson, Christopher Zoukis

### RESEARCH ASSOCIATE

Mari Garcia

### ADVERTISING DIRECTOR

Susan Schwartzkopf

### LAYOUT

Lansing Scott

### HRDC LITIGATION PROJECT

Lance Weber—General Counsel  
Sabarish Neelakanta—Staff Attorney

### **PLN is a monthly publication.**

A one year subscription is \$30 for prisoners, \$35 for individuals, and \$90 for lawyers and institutions. Prisoner donations of less than \$30 will be pro-rated at \$3.00/issue. Do not send less than \$18.00 at a time. All foreign subscriptions are \$100 sent via airmail. PLN accepts Visa and Mastercard orders by phone. New subscribers please allow four to six weeks for the delivery of your first issue. Confirmation of receipt of donations cannot be made without an SASE. PLN is a section 501 (c)(3) non-profit organization. Donations are tax deductible. Send contributions to:

**Prison Legal News**

**PO Box 1151**

**Lake Worth, FL 33460**

**561-360-2523**

**[info@prisonlegalnews.org](mailto:info@prisonlegalnews.org)**

**[www.prisonlegalnews.org](http://www.prisonlegalnews.org)**

PLN reports on legal cases and news stories related to prisoner rights and prison conditions of confinement. PLN welcomes all news clippings, legal summaries and leads on people to contact related to those issues.

Article submissions should be sent to - The Editor - at the above address. We cannot return submissions without an SASE. Check our website or send an SASE for writer guidelines.

Advertising offers are void where prohibited by law and constitutional detention facility rules.

PLN is indexed by the *Alternative Press Index*, *Criminal Justice Periodicals Index* and the *Department of Justice Index*.

## **Deadly Prison Health Care (cont.)**

his buttocks were red with blisters.

At 8:45, Moore, the PA, agreed to examine him. But he initially decided not to admit Mejia to the prison's inpatient unit. Pressed by nurse Vickie Holevinski, who recognized signs of sepsis – indicating Mejia was suffering from widespread infection with a threat of multiple organ failure – Moore relented.

Mejia was treated with antibiotics and given whirlpool baths. Still, two and a half hours into treatment, he was breathing rapidly and his blood pressure had plunged while his heart continued to race. He had skin excoriations over much of his body, particularly down his legs and around his buttocks. In some places, his skin had broken open, turned purple and was draining. He was dizzy and in pain, he told nurses, and suffering from shortness of breath.

Faced with clear indications Mejia was in danger, PA Moore decided he needed to go to an outside hospital. At 1 p.m. on January 15, 2011, an ambulance ferried Ricardo Mejia downtown to Walla Walla's Providence St. Mary Medical Center. It would be his last day in prison. And his last full day of life.

St. Mary doctors, finding a severely ill man in their emergency room, began running tests. Within a short time, they concluded Mejia, now in shock, needed specialized emergency care they were not equipped to deliver. He was a stretcher-ful of ailments, including perianal cellulitis, proctitis, sepsis and ulcerative colitis. Most crucial, doctors discovered necrotizing bilateral tonsillitis. A flesh-eating disease had set in.

Doctors alerted the state medical airlift service, and Mejia was hurried to Walla Walla Regional Airport and put aboard a small plane. By 6 p.m. he was in the air, flying over the prison, headed to Providence Sacred Heart Medical Center in Spokane, one of the region's biggest hospitals and specialty-care centers.

Alerted in advance, Sacred Heart doctors were ready when Mejia was wheeled in. He was immediately prepared for surgery, and doctors realized they'd have to cut away infected sections of his body. He had Fournier's gangrene, a critical infection of the genitalia. Capable of developing quickly, within hours, it causes severe pain in the

penis and scrotum and progresses from a spreading redness to necrosis – the death of tissue.

That and contributing conditions were also causing Mejia's kidneys to shut down. The medical team had no alternatives in surgery, and began removing his rectum and large portions of his buttocks.

It was a long, challenging debriding of the infected areas. And it came too late. At 2:02 the next morning, January 16, 2011, state prisoner Ricardo Mejia – a patient who'd been denied admittance to the prison infirmary 16 hours earlier – was pronounced dead.

Mejia's death didn't make the news. But it mattered to his family, at least, including his two children by separate mothers in Skagit County, and his surrogate mom, as April Soria calls herself. A counselor in a Skagit work-training program, Soria first met Mejia – whom she calls "Richard" – when he was a teen in trouble. Born a U.S. citizen, Mejia was abandoned by his birth mom when he was young and raised by others, spending much of his time on the streets. Young Mejia came to confide in Soria, and the two struck up a familial relationship. As his designated outside prison contact, she was first to get the bad-news phone call from Spokane early on the morning he died.

"It was the hospital chaplain," Soria recalls. "At first I didn't know he was saying Richard had died. I couldn't understand what this thing was that had happened. Then he said – I can't forget the words – 'This is the worst case of medical negligence we've ever seen.'"

But, as Soria would find out, it happened within a system not prone to publicize its mistakes or generate public sympathy for its prisoners. After all, Mejia, a onetime street gangster known as Li'l Jokes, entered prison with 17 felonies on his record. He'd already done a two-year prison stretch for discharging a weapon in public during a Mount Vernon gang dispute in 2005. In 2009, he was returned to custody, this time sent to the hard-time Walls for a string of crimes including the murder of an elderly woman.

In September 2007, Mejia, then 23, of Sedro-Woolley, was sought for burglary, assault, car theft and eluding deputies. With two female accomplices, he was looting a home outside Burlington when the homeowner walked in. The three fled

## Deadly Prison Health Care (cont.)

in a car and eluded police in a mad chase, hitting speeds of up to 90 mph and crashing the car in a cornfield. The women were nabbed but Mejia got away, running to a nearby home.

There he encountered an 84-year-old woman named Clara Thorp and demanded her car keys. She had no car. An enraged Mejia pushed the frail lady to the floor and ran to a second home nearby, where he was able to commandeer a car and escape. Officers found that car crashed in west Mount Vernon, but Mejia was gone again. Two days later, attempting to break into a vehicle in Mount Vernon, he was spotted by an officer. After a standoff in which Mejia climbed a structure and resisted arrest – he was Tased six times in a struggle – police took him into custody.

Three months later, the elderly woman died. Clara Thorp had been on the floor, undiscovered, for more than an hour, and was hospitalized with a broken pelvis. A few days later she also suffered a heart

attack. She ended up disabled, living in a senior care center, turning 85, and never regaining her health. On January 11, 2008 she died from pneumonia stemming from her injuries, the medical examiner ruled, labeling the death a homicide. By law, a death that occurs during the commission of a felony can be charged as a murder. Skagit prosecutors refiled 14 felony charges altogether against Mejia, including first-degree murder, accusing him of exhibiting “deliberate cruelty” in his attack on the defenseless Thorp.

Mejia, who faced the possibility of life in prison, mulled over his chances as the case dragged out for a year. Soria, his adopted mom, says “I told him, ‘You have to plead guilty.’ He didn’t intend to kill her. But he had to take responsibility for what happened.” Mejia agreed to a plea bargain. The case was winnowed down to seven felonies and the murder charge dropped to second-degree.

In June 2009, Mejia was sentenced to 34 years. “For a 24-year-old man, this criminal record could be the biggest one I’ve ever seen,” said Skagit County Superior Court Judge John Meyer, according to a report in the *Skagit Valley Herald*. Clara Thorp’s son, granddaughter and great-grandson were in the courtroom and read a statement about Thorp’s assault and death, recalling the agony of having “watched her go through so much pain she didn’t deserve.”

Mejia, contrite, apologized for his life of crime, drugs and gang-banging. “I know I’m a monster,” he told Thorp’s family. “I know you guys hate me. I hate myself for the things I’ve done.” Says mom Soria: “There was never a minute, from the day of her death to the day of his death, that he wasn’t sorry for what he did.”

As a career criminal, Mejia wasn’t a likely candidate to change his life by doing another prison stretch. Still, he had hope: If he’d completed his full term and been released, he’d have been 58. At least he wasn’t a lifer, nor had he been condemned to death.

Not officially, anyway. As it turned out, Mejia, like his victim, went through pain he didn’t deserve, serving a capital sentence he wasn’t given. Unlike Clara Thorp’s, however, no one would be punished for his death.

An autopsy ordered by the state determined Ricardo Mejia died of blood poisoning and septic shock resulting from the flesh-eating disease and rectal infection. The death raised concerns at the state Department of Health, and inspectors began perusing prison medical records and asking questions.

In a May 2011 report, the department found the prison had failed to provide “a formalized process for continuity of care and supervision.” Medical staff was not prepared, and supervisors were missing in action. There was only informal oversight of mid-level care providers, such as physician’s assistants, and a lack of case discussion between line staff and the prison’s medical director, Dr. James Edwards.

In Mejia’s case, nurses had repeatedly failed to obtain his vital signs or contact the on-call doctor or PA when those signs were out of whack – and even then there was a lack of urgent response, investigators found. On January 15, 2011, the day Mejia ended up being rushed to the hospital, the nurse visiting his cell that early morning recorded his heart rate at 154 – and merely made an appointment for him to see a doctor three hours later. Help should have come immediately.

## TYPING

### SERVICES Provided since 1998

Specifically designed, with special rates for the incarcerated person.

Black / Color Printing and Copying

SEND A SASE FOR A “FREE” PRICE LIST  
AND MORE INFORMATION TO:

LET MY FINGERS DO YOUR TYPING

Sandra Z. Thomas (dba)

P O Box 4178

Winter Park, Florida 32793-4178

Phone: 407-579-5563

Special Offer: \$2.00 off first order.

Special offer void after: 12/31/2014

## MARILEE MARSHALL & ASSOCIATES, ATTORNEYS AT LAW

California State Bar Board of Specialization

**Certified Criminal Law and  
Appellate Law Specialist**

*If you have a California case  
you need a California lawyer!*

(626) 564-1136



**State and Federal Appeals and  
Writs, Lifer Parole Hearings  
and Related Writs**

**31 years of success**

595 East Colorado Blvd

Suite 324

Pasadena, CA 91101

[marileemarshallandassociates.com](http://marileemarshallandassociates.com)

To critics of the prison medical-care system, the Mejia case sounded eerily familiar. In 2004, Charles Manning, a prisoner at Stafford Creek Correctional Center outside Aberdeen, was diagnosed as having an allergenic reaction to Robitussin, the cold medicine. He endured two days of pain in the prison infirmary, treated with an ice pack and medications. He was then belatedly diagnosed with an infection and transferred to Grays Harbor Community Hospital. There, emergency doctors determined – much as the Walla Walla and Spokane doctors did in Mejia’s case – that Manning had Fournier’s gangrene.

To save his life, the Aberdeen doctors removed his genitals and pounds of flesh. Unlike Mejia, Manning survived. But he was left disfigured and disabled. As *Prison Legal News* put it in a report, “Charlie Manning, doing 13 months after a drunken argument with a neighbor, left prison with no penis.” [See: *PLN*, June 2008, p.20].

Such cases are costly not only to the victims but to taxpayers – Manning, for example, later sued for damages, accepting a \$300,000 settlement from the state in 2008. (In one of the most costly state cases, Ger-

trude Barrow, 41, died at the Washington Corrections Center for Women in Purdy of a perforated chronic peptic ulcer and acute peritonitis. In 1994, her family was awarded \$630,000 due to state negligence).

“Prison doctors are not necessarily going to be the best practitioners available,” Paul Wright says in a purposeful understatement. “The state DOC has a long history of employing doctors with disciplinary histories and not sanctioning them even when they kill, and keeping them on the payroll.”

And Wright would know. Some of those doctors treated him. Wright was a state prisoner for 17 years, convicted of the murder of a drug dealer. Among those who tended him was a dentist named Joel Driven. In one example of his care, according to state investigators, the 72-year-old dentist wrenched out part of a McNeil Island prisoner’s jawbone rather than the tooth he intended to pull. That tore open the roof of the prisoner’s mouth, causing Driven to panic as the prisoner faced the likelihood of bleeding to death. A second dentist also froze, as did a dental assistant. Another assistant saved the day, taking over

Driven’s patient, shouting commands to the doctor and calling for emergency aid. She told investigators that what she’d witnessed was “torture ... barbaric.” In 2007, Driven was let go and his license revoked.

Wright, who served his time and went on to found *Prison Legal News* and campaign for prisoner rights, says the 10-year-old Manning case should have been a turning point for corrections medical reform. But “Whatever they did [after that settlement], if they did anything, obviously didn’t help Ricardo Mejia.”

Wright’s umbrella organization, the Human Rights Defense Center of Lake Worth, Florida, got interested in Mejia’s case. Started on a \$50 budget with an all-volunteer grassroots base, the center has today become a 501(c)(3) organization with 13 full-time employees including two staff attorneys. It specializes in litigation and advocacy for prisoners.

“Manning was crippled and Mejia killed because of the sheer neglect and ineptitude of DOC medical staff,” Wright says. “This is an ongoing story with the state DOC.”

It was a story that Mejia’s mom, Soria,

**William L Schmidt**  
ATTORNEY at LAW, P.C.

[911CIVILRIGHTS@GMAIL.COM](mailto:911CIVILRIGHTS@GMAIL.COM)

**559.261.2222 (clients only collect)**

**Legal Services for California Inmates:**

**APPEALS**

**WRITS OF HABEAS CORPUS**

**Civil Litigation**

**Catastrophic Injury Litigation**

**Money Management**

**Business Windup**

**Contracts**

CIVIL RIGHTS-SECTION 1983-FEDERAL AND STATE  
APPEALS AND WRITS- ONLY COMPLEX AND UNIQUE CASES  
PRISON-TRANSFER-DISCIPLINE-VISITING-CLASSIFICATION-HOUSING  
PROP. 36 RE-SENTENCING-3 STRIKES-MEDICAL-PAROLE HEARINGS

-----OUR CLIENTS GO HOME, HOW ABOUT YOU? -----  
*Please submit a single page summary of your case. Due to the volume, we cannot return documents or respond to all inquires. We are not a low cost or pro bono law firm, but if you want results, write us.*

**P.O. BOX  
25001  
FRESNO, CA  
93729**

## Deadly Prison Health Care (cont.)

wasn't getting in full, she says. "It was so difficult to get at the truth. The state wouldn't provide public records. One state records clerk I got to know said, off the record to me, 'This isn't normal. These records should be available. You need to get an attorney.'" She did.

In April last year, Wright's defense center filed a legal tort claim for damages against the state for the medical failures leading to Mejia's death. It was brought on behalf of Soria and Mejia's two children, ages 12 and 7. Jesse Wing, the lead attorney in the claim, from the Seattle law firm of MacDonald Hoague & Bayless, says "Mr. Mejia's case illustrates something worse than inadequate care. He suffered not just incompetent care, but obvious indifference to his serious pain and illness. This 'I don't care if you live

or die' attitude is at odds with the most basic duty of a health-care provider and of the Hippocratic oath."

The claim focused particularly on the role of Moore, the physician's assistant who'd been reluctant to admit Mejia as an inpatient. Prison medical director Edwards told state investigators that Moore "tends not to listen to nurses ... [he] irritates and frustrates" them. Pat Rima, the prison's former health-care administrator, said Moore was "at times ... on the edge with his care decisions," and that at one point she opted not to renew his then-part-time contract. But after Rima moved on to another job, her replacement rehired Moore, with Edwards' approval, full-time.

One nurse recalled that on the day Mejia would eventually be rushed to an outside hospital, she had repeatedly beseeched Moore to admit him as an inpatient. Mejia had arrived in a wheelchair in great pain, his heart racing. Another nurse said Mejia was so obviously septic he "could go south in a hurry," yet "Mr. Moore was sitting there, allowing the patient to wait 45 minutes while no treatment orders or medication was given."

About the time the claim was filed, the state Medical Quality Assurance Commission – responding to a separate complaint filed by Wright's group – lodged charges against Moore, claiming his care may have constituted medical "incompetence, negligence, or malpractice." He failed to recognize a life-threatening condition, the commission said, and lacked concern when urgency was called for.

Moore didn't take much time to settle the complaint. And why not? His penalty was to write a paper about his error. In what it calls an informal disposition, the commission ordered Moore to study up on sepsis, colitis and necrotizing fasciitis, then compose 1,000 words on those topics. He'd also have to make a class-like presentation to others on the prison medical team, and would have to reimburse the commission for costs, \$750. "It was a slap on the wrist," says Mejia attorney Wing.

In January of this year the charges against Moore were formally withdrawn, although he still must comply with the writing and educational stipulations of the disposition.

That same month, having received no answer to the claim filed against the state, Wright's group went to court and formally filed a lawsuit against the Department of Corrections on behalf of Mejia's estate. In the suit, attorneys alleged that Mejia "died a horrible and painful death at age 26 ... [his] medical providers ignored obvious signs of infection and serious medical illness, and he literally rotted to death." Timely diagnoses and treatment would have spared his life and the pain he suffered, the suit claimed, citing mistakes turned up by the Health Department probe.

Four months later, in April 2014, the DOC agreed to settle. [See related article in this issue of *PLN*, p.8].

The department conceded some responsibility for Mejia's painful death. It agreed to pay \$740,000 to his family, likely a record amount in such a case. The

### \*\*\*\*7 DAY FREE TRIAL\*\*\*\*

INMATE EMAIL NEWS + SERVICES

BOP INMATES - CORRLINKS USERS

DAILY EMAILS + UPDATES ON SPORTS

NEWS, MUSIC, ENTERTAINMENT - TV

TONIGHT'S MOVIE AND SPORTS GUIDE

INFO@FORTHESCOOP.COM

P.O. BOX 90594

SAN ANTONIO, TX 78209

# FreedomLine®

**We make it simple.**

**You reach your loved ones by calling a local number.  
That's a lot cheaper than calling long distance. *It's that simple!***

- We charge \$2.50 per month for the number.
- For Calls to anywhere in the U.S., we charge you 5¢ per minute
- To Mexico - 15¢; to Canada - 11¢, to just about anywhere else in the world - 31¢
- No Contract, No Credit Check, No Setup Fee, No Cancellation Fee, No Early Termination Fee
- Cancel anytime; any money left on the account is refunded

**Tell Your Folks to Sign Up at [www.freedomline.net](http://www.freedomline.net)**

Or Mail: FreedomLine  
PO Box 7 - SCA  
Connersville, IN 47331

Also see our long-running  
Classified Ad in this and every issue

FCC Reg. No. 0021217047

*Any time you refer  
a new customer  
and they sign up, you  
both get 300 free minutes!  
Some restrictions apply.  
Details upon request.*



department also said it had made some changes in its prison medical operations to comply with the Health Department's findings, including assigning prisoners to doctors, expanding dialogue between staff and supervisors, and informing staff in more detail about flesh-eating bacteria. But the state admitted no legal wrongdoing in Mejia's death.

Nonetheless, as in the earlier flesh-eating case, it was a costly mistake in life and money that could have been avoided, says Paul Wright. "The common theme here is the DOC botched the diagnoses until it was too late – and remember, these are deep-tissue bacteria that take at least a week to develop to the killer phase, and as soon as these men were taken to a hospital, the ER doctors diagnosed them almost immediately.

"I think the most compelling story is the bigger issue of inadequate medical care," Wright says. "The DOC spends over \$100 million a year on [care] and prisoners still die gruesome deaths from easily diagnosed illnesses."

Wright says his organization expects to bring other suits in the future. Unfortunately, he says, there will be a need for them.

As for April Soria, she didn't share in the settlement. "She is just a very good person who tried to help him and his family," says attorney Wing, "so the settlement money went to his children."

In June 2014, Moore showed up at a medical commission hearing to see how he had complied with settlement stipulations. Wing, who also attended, said "a state lawyer told us afterwards that a purpose of the hearing was for the board to see Mr. Moore's demeanor when discussing care of patients. We pointed out that Mr. Moore's demeanor did not seem appropriate under the circumstances. He did not show any sense of responsibility for the death of Mr. Mejia or even that he was discussing the death of a human being at the hearing."

But apparently Moore received the state's blessings. He remains a practicing, full-time PA at the state pen. ■

*This article was originally published by Seattle Weekly (www.seattleweekly.com) on July 9, 2014; it is reprinted with permission, with minor edits.*

*This article was originally published by Seattle Weekly (www.seattleweekly.com) on July 9, 2014; it is reprinted with permission, with minor edits.*



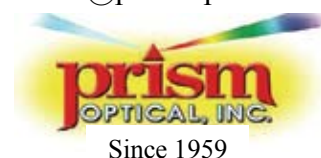
## Save on Prescription Eyeglasses & Shades

Send for a **FREE** Catalog  
Money Back Guarantee

**Prism Optical, Inc.**  
**10954 NW 7th Ave**  
**Dept: LN1014**  
**Miami, FL 33168**

Inquiries from Friends  
and Family Welcome  
1-800-637-4104

www.prismoptical.com  
contact@prismoptical.com



- \* *Post-Conviction Specialists (Habeas Corpus/2254/2255/AEDPA/Procedural Bars/Coram Nobis/PRP/Certiorari/Sentence Modifications/DNA and more).*
- \* *All 50 States, D.C., Federal District/Appellate and Supreme Court.*
- \* *Special programs available for Veterans.*
- \* *Payment plans available.*
- \* *Now accepting Credit Cards.*
- \* *FREE initial consultation (send SASE)*
- \* *CALIFORNIA INMATES: We do 2-3 striker VARGAS petitions*
- \* *FEDERAL INMATES: We do "Drugs Minus Two" Petitions which are RETROACTIVE!*
- \* *SPECIAL RATES FOR PLN SUBSCRIBERS!*

### Legal Insights Inc.

25602 Alicia Parkway Suite 323

Laguna Hills, CA 92653

714-941-0578

info@legalinsights.org

www.legalinsights.org

A California 501(c)(3) Non-Profit Organization

## Learn The Law!



It's a **POWERFUL** influence in your life.

Choose education to help yourself and others. Blackstone's Independent Study Paralegal Program offers you the opportunity to be productive while serving time.

- Learn Civil & Criminal Law
- Learn Legal Research
- 110 Years of Legal Training Experience
- Study in Your Spare Time
- Affordable Tuition, Easy Payment Plan

Only  
**\$30.00**  
Per Month

☐ **Yes! I'd like to learn more** ☐ **Paralegal Course**  
Please rush me **FREE** course information.

Name \_\_\_\_\_ Doc# \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**Blackstone**  
**Career Institute**

Your tuition cost covers your entire program including all textbooks, study guides, exam and homework evaluation services, and your certificate.

P.O. Box 3717 • Allentown, PA 18106

# \$750,000 Settlement for Washington State Prisoner's Wrongful Death

by Carrie Wilkinson

**A**LTHOUGH PRISON LEGAL NEWS AND its parent organization, the Human Rights Defense Center (HRDC), are best known for litigation involving censorship by prison and jail officials, HRDC also co-counsels select other cases, mainly involving wrongful deaths on behalf of prisoners' surviving family members.

As detailed in this issue's cover story, one of those cases involved Washington state prisoner Ricardo Cruz Mejia, who died after an untreated infection turned deadly. The medical examiner listed his cause of death as necrotizing fasciitis/Fournier's gangrene, sepsis and septic shock.

Mejia's preventable death was a case of history repeating itself. In 2004, Washington prisoner Charles Manning was initially diagnosed as having a reaction to Robitussin. Hospital staff subsequently found he had Fournier's gangrene, and his genitals were amputated to save his life. Manning survived and filed suit, settling with the state for \$300,000 in 2008. [See: *PLN*, June 2008, p.20].

Ricardo Mejia was diagnosed with ulcerative colitis in October 2010 while incarcerated at the Washington State Penitentiary in Walla Walla, and prison medical staff prescribed medication to treat his condition. His symptoms included gastrointestinal problems and blood in his stool.

He was seen by medical staff 14 times in the 48 days before he died, and not only reported the treatments were not working but that his symptoms were becoming progressively worse – including headaches, a sore throat, skin rashes, pain and vomiting.

As with Manning, the initial treatment prescribed for Mejia did not remedy his symptoms and DOC medical staff failed to take further action until it was too late and his condition escalated into Fournier's gangrene. Mejia died of the same infection under the care of the same prison medical system that had almost killed Manning seven years earlier.

A DOC incident report prepared by Dr. David Kenney seven months after Mejia's death noted that "the drugs he received to control his symptoms (steroid enemas, aminosalicylates and oral steroids) may not have completely controlled his disease," and that "an ongoing evaluation of his response to these medications was not recorded."

Following an initial tort claim, a complaint was filed in Thurston County Superior Court on December 20, 2013 on behalf of Mejia's estate and his two minor children, alleging that DOC medical staff had "ignored obvious signs of infection and serious illness and he literally rotted to death under their care through negligence and deliberate indifference."

According to the complaint, Mejia's symptoms worsened in January 2011, and on January 14 he sought medical care for mouth and rectal ulcers; a nurse noted he had not had a bowel movement in four days, and his rectum "showed a large, excoriated, blistered area." Physician assistant Kenneth Moore refused to see Mejia or admit him to the prison's inpatient unit, but only ordered Lido-

caine for pain over the phone. Moore later agreed to admit Mejia for inpatient care after a nurse voiced concerns.


Following worsening symptoms, Mejia was finally transported to an outside hospital on January 15, 2011, where surgeons "cut away large portions of his buttock and rectum" in a last-ditch effort to save his life. They were unsuccessful and he "died a horrible, grotesque, and painful death, at age 26."

The lawsuit claimed that Washington DOC medical staff had violated standards of patient care by failing to provide adequate treatment to Mejia in spite of his obvious, serious symptoms. The complaint noted that recognizing those symptoms "required only basic health care skills and knowledge; it is 'Medicine 101.'"

The Washington Department of Health conducted an investigation into Mejia's death and found that prison medical staff "did not provide a formalized process for continuity of care and supervision of care," which "may result in inappropriate and unsafe care." Further, the investigation determined that "the facility did not have a formalized process for midlevel providers to discuss complex medical cases with the medical director and did not have [a] formalized process to refer complex cases from the midlevel provider to the medical director."

Dr. Kenney's review recommended ten improvements for DOC medical staff, including a review and assessment of the primary care system "to optimize comprehensive assessment and management of medical conditions, [to] ensure that continuity of that care is maintained and [staff] be accountable for oversight of all care delivered."

Four months after the lawsuit was filed, which named the Washington DOC and six DOC medical practitioners – including Moore – as defendants, the case settled in March 2014 for \$750,000. Mejia's estate was represented by the Human Rights Defense Center and Seattle attorney Jesse Wing with MacDonald Hoague & Bayless. See: *Soria v. Washington DOC*, Thurston County Superior Court (WA), Case No. 13-2-02598-9. ■



It's The Sequel ... GIRL MEETS WORLD ...

**Channel Guide** magazine

THE '90s  
The Era That Brought Us ...

Back With A Vengeance (For Real)  
**SHARKNADO 2**

**Halle Berry**  
Completely "Extant"

THE LOTTERY  
L'Heure d'une Vengeance

Guillermo Del Toro's  
**THE STRAIN**

**Know What's Good On TV With Channel Guide magazine**

- Daily schedules for **over 120 channels**
- Weekly **TV best bets**
- **Over 3,000 movie listings**
- **TV Crossword, Sudoku, celebrity interviews** and more
- **1 Year (12 issues) for just \$35**

**Mail your \$35 check or money order payable to Channel Guide Magazine to:**  
Channel Guide Magazine AAKPLNG  
PO Box 8501, Big Sandy, TX 75755-8501  
**Include your name, ID number and address.**  
**Or call 866-323-9385 or 903-636-1107**

# Texas Court Finds CCA Subject to State's Public Information Act, Awards Attorney Fees

ON SEPTEMBER 15, 2014, A TRAVIS County District Court entered a final judgment that found Corrections Corporation of America (CCA), the nation's largest for-profit prison company, is a "governmental body" for purposes of the Texas Public Information Act and is therefore subject to the "Act's obligations to disclose public information."

This was the first time a Texas court had held that a private prison company was required to comply with the state's public records law, joining decisions by courts in Tennessee, Florida and Vermont. [See: *PLN*, July 2013, p.42; June 2013, p.14; June 2010, p.29].

Travis County District Court Judge Gisela D. Triana entered the judgment in a lawsuit brought against CCA by Prison Legal News.

PLN filed suit on May 1, 2013 after the company refused to produce records related to the now-closed Dawson State Jail, including reports and audits concerning CCA's management of the facility. [See: *PLN*, June 2013, p.46]. CCA operates nine facilities in Texas, including four state jails.

PLN had argued that CCA meets the definition of a "governmental body" under the Texas Public Information Act because – among other factors – the company "shares a common purpose and objective to that of the government" and performs services "traditionally performed by governmental bodies."

In the latter regard, PLN noted that "Incarceration is inherently a power of

government. By using public money to perform a public function, CCA is a governmental body for purposes" of the state's public records law.

The court agreed, noting that "CCA failed and refused to disclose the documents" requested by PLN, which were "public information" as defined by state law. Accordingly, CCA was ordered to produce the records; Judge Triana also ordered the company to pay \$25,000 in PLN's attorneys' fees and costs, plus another \$5,000 if it unsuccessfully appeals.

"That is the right result and clearly what the Public Information Act requires," stated Cindy Saiter, one of PLN's attorneys.

CCA has vigorously opposed compliance with state public records laws and has lobbied against the Private Prison Information Act on the federal level. [See: *PLN*, Feb. 2013, p.14].

"Although CCA acts as the functional equivalent of a government agency when it runs prisons and jails, it opposes efforts to hold the company accountable under public records laws to the same extent as government agencies," said PLN editor Paul Wright. "It makes you wonder what the company is hiding, and why it doesn't want to be held accountable to members of the public whose tax dollars pay for CCA's private prison contracts."

"The public saw truly awful things when we began pulling the veil from the CCA-

operated Dawson State Jail last year," added attorney Brian McGiverin with the Texas Civil Rights Project. "Today, allegations are coming to light of CCA's complicity in a widespread sexual abuse hazing ritual at the Bartlett State Jail. Is it any wonder CCA opposes greater transparency?"

PLN was represented by attorneys Cindy Saiter with Scott, Douglass & McConnico, LLP and Brian McGiverin with the Texas Civil Rights Project. The case is *Prison Legal News v. CCA*, Travis County District Court, 353<sup>rd</sup> Judicial District, Cause No. D-1-GN-13-001445.

The hazing ritual mentioned by McGiverin involves allegations in a federal lawsuit that claims prisoners at the Bartlett State Jail were stripped by other prisoners, turned upside down and had their naked buttocks slammed against the window of a guard station – known as "ass on the glass." A prisoner subjected to the hazing said he was sexually assaulted during the incident, and that there was only one CCA guard in the unit, who did nothing to stop it.

The October 2013 "ass on the glass" incident reportedly lasted two hours and involved 55 prisoners. The lawsuit, filed in September 2014, remains pending. See: *Doe v. CCA*, U.S.D.C. (W.D. Texas), Case No. 1:14-cv-00840. ■

Sources: *HRDC press release (Sept. 18, 2014)*; [www.mysanantonio.com](http://www.mysanantonio.com)

## LAW OFFICES OF

**ELMER ROBERT KEACH, III**



Law Offices of Elmer Robert Keach, III, PC  
One Pine West Plaza, Suite 109  
Albany, NY 12205-5531  
518.434.1718  
[www.keachlawfirm.com](http://www.keachlawfirm.com)

Attorney Bob Keach  
NITA Master Advocate  
Member, Multi-Million Dollar Advocates Forum  
Outside Counsel, Prison Legal News

## Experienced Civil Rights Attorney dedicated to seeking justice for those who are incarcerated

*Custodial Death Cases • Wrongful Arrest and Incarceration  
Medical Indifference Cases • Corrections and Police Brutality  
Sexual Abuse and Assault • Illegal Strip Searches  
Class Actions • First Amendment Litigation*

**WHEN YOU OR A LOVED ONE HAVE BEEN WRONGED,  
YOU HAVE A VOICE.**

Attorney Keach prefers all inquiries by mail to be typed, and limited to five pages.  
DO NOT SEND UNSOLICITED RECORDS. THEY CANNOT BE RETURNED.  
Make sure to exhaust your administrative remedies and comply with state law notice requirements, if applicable, to preserve state law intentional tort/negligence claims.

# From the Editor

by Paul Wright

**T**HIS MONTH'S COVER STORY ABOUT the Washington Department of Corrections killing prisoner Ricardo Mejia through medical neglect is in many ways an old one. Over the past 24 years, PLN has run hundreds of articles about prisons and jails murdering prisoners through medical and mental health neglect, malpractice and deliberate indifference.

What is different about this story is that attorneys from the Human Rights Defense Center – the organization that publishes *Prison Legal News* – represented Mr. Mejia's family and estate in obtaining some modicum of justice following his death, with the goal of trying to ensure it does not happen to other prisoners.

When PLN was founded in 1990, one of our goals was to be able to conduct public interest litigation involving the criminal justice system. Between 1993 and 2009, PLN filed a number of censorship and public records lawsuits around the country, many involving cutting-edge legal issues, which helped to ensure that the right of prisoners and publishers to send and receive information was respected, and brought a modest amount of transparency to the secrecy of government institutions.

In 2009 we created our litigation project, which allowed us to employ our first staff attorney to represent PLN in censorship and public records litigation as well as represent others in matters related

to HRDC's mission. Today, HRDC's litigation project employs two full-time attorneys including Lance Weber, our litigation director, plus two full-time paralegals.

To date, HRDC attorneys have successfully represented the estates of two prisoners in Tennessee who died due to medical neglect involving private prison companies, the estate of a Pennsylvania prisoner who died from a lack of mental health treatment and the family of a prisoner brutally murdered by other prisoners at a private prison in Arizona. Those cases were all resolved by confidential agreements, which have not allowed us to report the outcomes; several were resolved pre-litigation.

The case involving Mr. Mejia is not subject to a confidentiality provision and is fully reported in this issue of PLN. An upcoming issue will report the results of a lawsuit against Corrections Corporation of America, which HRDC resolved in favor of a former prisoner whose baby was born prematurely and died while she was held at a CCA-run jail.

Due to our very limited resources, HRDC's attorneys can only provide representation in a select number of cases; our current focus is on cases involving deaths, and as the cover story makes clear, where the facts of the case lend to larger public issues related to the need for prison reform. We would like to thank Mr. Mejia's family

for choosing HRDC to represent them and also our co-counsel, Jesse Wing at MacDonald Hoague & Bayless (MHB) in Seattle. Carrie Wilkinson, the director of our Washington Prison Phone Justice Campaign, also worked on the case while she was employed at MHB prior to joining HRDC.

We have a lot of exciting news this month. In addition to the resolution of Mr. Mejia's wrongful death suit, we are very happy to announce that we are publishing the *Disciplinary Self-Help Litigation Manual* by Dan Manville within the next few weeks. Since 2009, PLN has published two other books – the *Prisoners' Guerrilla Handbook to Correspondence Courses in the U.S. and Canada (3rd ed.)* and *The Habeas Citebook: Ineffective Assistance of Counsel*. Our goal is to continue to publish high quality self-help, non-fiction reference books which are of interest to prisoners and will help them help themselves.

We are proud to be publishing the second edition of the *Disciplinary Self-Help Litigation Manual*. Dan was HRDC's first staff attorney; we have published his articles for many years, and he has represented PLN in censorship litigation dating back to 1999. Every prisoner in America is subject to prison and jail disciplinary hearings and needs to know his or her rights in order to enforce them. The book is in the final stages of production and we anticipate it

## Support Prison Legal News with these beautiful gifts!

CALL **561-360-2523**, MAIL ORDER OR USE WEB FORM  
[HTTP://WWW.PRISONLEGALNEWS.ORG/](http://WWW.PRISONLEGALNEWS.ORG/)



## Hand Embroidered Greeting Cards

Made by women prisoners in Cochabamba, Bolivia. Each card is individually made, no two are identical. The prisoners are paid a fair wage for each card and keep 100% of the pay to support themselves and their families. Local fair trade non-profits in Bolivia supply the materials for the cards. **\$6.**

**Hand Made Hemp Tote Bag** All natural hemp tote bag hand made in Vermont with the Prison Legal News logo on both sides, in red and black. Great for carrying books, groceries, and more! Stamped on the inside that no sweatshop, prison or child labor was used in its manufacture. **\$12.**

\$6 shipping and handling for orders under \$50.



will be available for shipping no later than November 15. If you want to pre-order your copy and have it shipped immediately upon receipt, order it now for \$49.95 — see the ad on p. 53.

Additionally, it is time for the annual PLN and HRDC fundraiser. We recently realized that many people, including long-time PLN subscribers, are not aware of the full scope of our activities on behalf of prisoners and their families. This year we are sending everyone a copy of our 2013 annual report and some news articles about PLN that provide a detailed overview of everything we do on an ongoing basis.

Our fundraising goal this year is \$75,000 to help cover the costs of the Campaign for Prison Phone Justice. Thanks to the help of our readers and supporters, HRDC was able to play an integral leadership role in getting the Federal Communications Commission to cap the cost of interstate phone calls from prisons and jails. We are currently trying to get the FCC to extend those rate caps to the costs of intrastate (in-state) phone calls, which make up the majority of calls from detention facilities.


We incur extensive costs in obtaining the phone contracts, calling rates, ancillary fees and commission data that have underpinned the FCC campaign, and most importantly, everyone in the advocacy community has relied on our data. Travel expenses for testifying before the FCC, meeting with FCC commissioners and staff, etc. all add up, and we have a full-time staff member working on the campaign.

Donations are urgently needed to support our efforts; your financial help has made the Campaign for Prison Phone Justice possible, and we are close to achieving significant reforms beyond the interstate rate caps. If you and your family are tired of being gouged and ruthlessly exploited by prison telecom companies and the prisons and jails that take kickbacks in exchange for telephone monopolies, then please donate to HRDC so we can continue the fight.

This issue of *PLN* includes an ad describing how to contact the FCC about the high costs of in-state prison phone calls and the negative impact those costs have had on you and your family. Comments can be submitted in writing by prisoners and online by non-prisoners. This is the

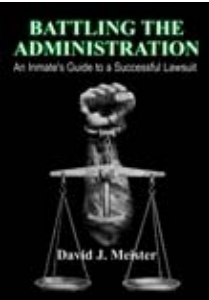
time to make your voice heard — please let others know about the need to contact the FCC and to donate to HRDC and PLN so we can maintain the Campaign for Prison Phone Justice!

Lastly, as the holidays approach, nothing makes for better gifts than a subscription to *PLN* and some of the books we distribute, plus you can still take advantage of our Subscription Madness offer (see the ad on page 25).

Enjoy this issue of *PLN* and please encourage others to subscribe. 

**BATTLING THE ADMINISTRATION**  
An Inmate's Guide to a Successful Lawsuit

by David J. Meister  
ISBN: 9781940638034





Send Check or money order to: **Wynword Press**  
P.O. Box 557  
Bonners Ferry, ID 83805

\*Guidance on how to get organized \*Sample complaint & other forms  
\*Covers court rules, evidence and exhibits  
\*Citations to controlling case law \*Summary of prisoner's rights \*Details on hearing and trial practice, ...and more!

**1<sup>st</sup> Edition 2013-2014**  
**\$34.95** includes shipping

Tele: 208-267-0817  
Order online at: [www.wynwordpress.com](http://www.wynwordpress.com)

 **NOLO**



**Nolo's Plain-English Law Dictionary**

\$29.99

Order from  
**Prison Legal News**  
P.O. Box 1151  
Lake Worth, FL 33460  
561-360-2523  
Add \$6 shipping for orders under \$50

[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

## BRANLETTES BEAUTIES

**OUR SIMPLE POLICIES:**

SPECIAL REQUESTS ARE NOT PERMITTED AND ALL MODELS ARE OF LEGAL AGE (BOP-FRIENDLY). DUE TO TREMENDOUS TIME AND COST ANSWERING LETTERS, UNLESS YOU ARE PLACING AN ORDER OR A QUESTION REGARDING YOUR ORDER, WE WILL NOT REPLY TO ANY OTHER QUESTIONS. SASE ARE REQUIRED FOR ANY INQUIRIES OR CONCERNS!

**YOU AND YOU ALONE ARE RESPONSIBLE FOR YOUR SELECTIONS BEING ALLOWED INTO YOUR FACILITY:**

KNOW YOUR INSTITUTIONS POLICIES AS TO WHAT IMAGE CONTENT IS ALLOWED. RETURNED ORDERS ARE NON-REFUNDABLE. THEY WILL BE HELD FOR 14 CALENDAR DAYS IN ORDER FOR YOU TO SEND SELF-ADDRESSED STAMPED: 3 FIRST CLASS STAMPS PER ENVELOPE, WITH A STREET ADDRESS FOR EVERY 20 PICTURES. ALL RETURNED IMAGES HELD AFTER TWO WEEKS WILL BE RE-SOLD AND WE WILL RETURN TO OUR STOCK.

**ALL PAYMENTS ARE BY INSTITUTIONAL CHECKS OR U.S. POSTAL SERVICE OR WESTERN UNION MONEY ORDERS.**

THESE PAYMENTS ARE PROCESSED IMMEDIATELY AND SHIPPED IN LESS THAN 3-4 WEEKS. ANY OTHER COMPANY MONEY ORDERS DELAY SHIPMENT 8-10 WEEKS OR UNTIL THAT MONEY CLEARS OUR BANK. YES, WE DEAL WITH PEOPLE THAT ARE, WHILE IN PRISON, STILL TRYING NICKEL AND DIME SCAMS...

**ALL SALES ARE FINAL! EACH CATALOG HAS 84 GORGEOUS LADIES TO CHOOSE FROM HIGH QUALITY PRINTS ON 4X6 GLOSSY PHOTO PAPER**

**OUR PRICES ARE SIMPLE:**

1-4999 PHOTOS = 0.45 CENTS EACH  
5000+ PHOTOS = 20% DISCOUNT  
1-9 CATALOGS: \$3.00 EACH (+SASE)  
10 CATALOGS: \$25.00+SASE (4 STAMPS)

**SHIPPING & HANDLING:**

DUE TO VARIOUS PRISON POLICIES REGARDING HOW MANY PICTURES CAN BE SENT IN ONE ENVELOPE, OUR POLICY IS AS FOLLOWS:

01 - 5 PHOTOS---\$1.00 PER ENVELOPE  
06 - 15 PHOTOS---\$1.50 PER ENVELOPE  
16 -25 PHOTOS---\$2.00 PER ENVELOPE

**BRANLETTES BEAUTIES**  
SELECT YOUR FAVORITE:  
WHITE CATALOGS (60 VOLUMES)  
BLACK CATALOGS (60 VOLUMES)  
ASIAN&LATINO CATALOGS (60 VOLUMES)  
PLEASE STATE WHAT STYLE PHOTOS:  
PROVOCATIVE POSES OR NUDE

**FREE CATALOG???**

YOU READ IT RIGHT!  
JUST SEND US TWO U.S. FOREVER STAMPS AND A SELF ADDRESSED SELF ENVELOPE AND WE WILL SEND TO YOU ONE NUDE OR BOP-FRIENDLY SAMPLE CATALOG (1 PER CUSTOMER) WITH 84 GORGEOUS GIRLS IN FULL COLOR. ACT NOW AS THIS OFFER WILL NOT BE AROUND LONG!!

**BRANLETTES BEAUTIES**  
P.O. BOX 5765  
BALTIMORE, MD 21282

BRANLETTES BEAUTIES BAC A RANDOM SELECTION OF 50 OF THE RARE AND EXOTIC \*\*\*YES, FIFTY BEAUTIES ALL POSING JUST FOR YOU!\*\*\* PLUS TWO OF OUR FINEST COLOUR CATALOGS ONLY \$19.95 DID YOU READ THAT RIGHT?? \*\*\*\$19.95???\*\*\* YES, ONLY \$19.95 FOR 50 OF BRANLETTES BEAUTIES BEAUTIES (PLEASE SPECIFY NUDE OR BOP-FRIENDLY) \*\*\*PLUS\*\*\* TWO OF OUR FINEST COLOUR CATALOGS FREE (YOU PICK A VOLUME) OUR REGULAR SHIPPING AND HANDLING POLICIES APPLY.

# Women in Solitary Confinement: “The Isolation Degenerates Us into Madness”

by Victoria Law

**A** MASS PRISONER HUNGER STRIKE rocked California's prison system last year, drawing international attention to the extensive use of solitary confinement in the United States. Increasingly, solitary is finding its way into the mainstream media and onto activist agendas. Nearly all of the attention, however, has focused on solitary confinement in men's prisons; much less is known about the conditions and experiences inside women's prisons.

During legislative hearing on solitary confinement in California in October 2013, lawmakers asked prison officials about women in solitary confinement. Officials from the California Department of Corrections and Rehabilitation (CDCR) stated that 74 women were held in the Security Housing Unit at the California Institution for Women (CIW) and a handful of women were awaiting transfer from the Central California Women's Facility (CCWF). CDCR does not separate people in the SHU with mental illness from those without mental illness. CDCR officials did not address the number of people in the Administrative Segregation (or Ad Seg) Unit.

According to CDCR statistics, as of September 2013, 107 women were held in Ad Seg at CCWF, which has a budgeted capacity of 38. The average stay was 131 days. Twenty women had been there longer than 200 days, two had exceeded 400 days and another two women had exceeded 800 days. At CIW, 34 women were in Ad Seg with an average stay of 73 days. Two women have exceeded 200 days.

Lawmakers' inquiry prompted advocacy group California Coalition for Women Prisoners to send an open letter to Assemblywoman Nancy Skinner requesting that she investigate conditions of solitary confinement in women's prisons. The group noted that, with the conversion of Valley State Prison for Women to a men's prison and the transfer of several hundred women to California's other two women's prisons, the use of solitary confinement has dramatically increased.

To justify the increase, CDCR has cited “enemy concerns” or a documented disagreement between people that may have led to threats or violence. Those designated as having “enemy concerns” are locked in their cells 22 to 24 hours a day and lose all privileges. CDCR reports do not separate the number of people in Ad Seg or the SHU for rules violations versus those confined because of “enemy concerns.” The California Coalition for Women Prisoners has noted that many of these “enemy concerns” are based on incidents that happened years ago and may not be valid today.

Dolores Canales has a son who has spent 13 years in Pelican Bay's SHU. Canales has also had firsthand experience with solitary confinement. While imprisoned at CIW, she spent nine months in Ad Seg, where she was confined to her cell 22 hours a day. “There, I had a window. The guards would take me out to the yard every day. I'd get to go out to the yard with other people,” she recalled.

But the isolation still took its toll: “There's an anxiety that overcomes you in the middle of the night because you're so locked in,” she described. Even after being released from segregation, Canales was unable to shake that anxiety. She broke into a sweat and panicked each time she saw a group of officers even though she had broken no rules. “I just can't forget,” she stated years after her release from prison.

Although the spotlight on solitary has focused largely on California, every women's prison has a solitary confinement unit. Florida's Lowell Correctional Institution for Women has a Closed Management Special Housing Unit (CM SHU) where women are confined to their cells 23 to 24 hours a

day. “There is no free movement or social interaction,” reported one woman. “We just sit locked in a concrete and steel room the size of a small residential bathroom.”

In Indiana, Sarah Jo Pender has spent nearly five years in solitary. “My cell is approximately 68 square feet of concrete with a heavy steel door at the front and a heavily barred window at the back that does not open,” she described. “Walls are covered in white; the paint chipped off by bored prisoners reveals another layer of primer white. No family photos or art or reminder notes are allowed to be taped to the walls; they must remain bare. Our windowsills would be a great place to display greeting cards and pictures, but those are off-limits, too....”

“There is a concrete platform and thin plastic mat, a 14-by-20-inch shelf and round stool mounted to the floor, and a steel toilet-sink combo unit. We get no boxes to contain our few personal items. Everything must fit on the shelf, bed or end up on the floor.”

Her cell is searched daily by guards although, like everyone else in the prison, she is strip searched any time she leaves the unit for a doctor's appointment or a no-contact visit. When she is taken to the showers, she is handcuffed, then locked into a 3-foot-by-3-foot shower stall with a steel cage door for a 15-minute shower. As is the case across the country, visits are conducted behind glass.

Pender was placed in solitary confinement after successfully escaping from prison in 2008. With the assistance of a guard who had been having sex with her and several other women in the prison, she escaped. After 136 days, she was found, re-arrested and returned to prison, where she began her unending stint in solitary confinement.

Because Pender is considered a high escape risk, the administration has taken steps to isolate her even within the segregation unit. “Other women could talk to each other through their doors, but they were instructed to never talk to me or else they'd be punished,” she recounted. “The male guards were never to speak to me unless there was a second guard present, and only to give me orders. Female guards



**FINALLY REAL LADIES/REAL LETTERS!!**  
Genuine, friendly, compassionate  
Writers! **GUARANTEED RESPONSES!**  
**\*\*WE'RE WAITING FOR YOUR LETTERS! \*\***  
(this is a service - a fee is involved)  
**Send a SASE & \$3.00**  
**4 this true exciting news!**  
**Nubian Princess Ent.**  
**POB 37**  
**Timmonsville, SC 29161 18+**  
**Facebook.com/chanail.paree**  
**Also XXX DVD's and Erotic Letters -**  
**Non Inmates Welcome!**

Est 1998



only spoke when absolutely necessary, per orders, except they chatted freely with any other prisoner."

As in many jails and prisons, those with mental health concerns are often placed in segregation. "One of them is going to be released to society this month," Pender wrote. "She has been in solitary for six or eight months because she has repeatedly cut herself with razors, including her throat, several times. Their solution: Lock her in a room and don't give her a razor."

Another woman spent two-and-a-half years in segregation, originally for disruptive behavior. Her stay was extended each time she hurt herself. "She cut her wrists in the shower. They found her, took her to the hospital, stitched her up, put her back in lock and wrote her up for self-mutilation."

"She ripped the stitches out and got another battery write-up. Threw a mop bucket at the sergeant for another assault write-up and was completely maxed out on her sentence, so they let her go home from solitary. She returned that same year with new charges. She never got therapy while here – or any mental health care that she obviously needed."

While Pender did not enter with preexisting mental health concerns, years of little to no human contact has taken its toll. At times she feels lethargic and depressed. In 2010, she had a psychotic break, which lasted nine months. Since then, she has been on and off half a dozen kinds of psychotropic medications.

"I didn't need the meds for the two years I spent in godawful Marion County Jail and didn't need them for five years at Rockville prison," she recalled. "But when you lock people in rooms for long periods of time, the isolation degenerates us into madness, or at least depression."

Others with no preexisting mental health conditions have also been affected. "I watched a woman claw chunks out of her cheeks and nose and write on the window with her blood," Pender said. "My neighbor bashed her head against the concrete until officers dragged her out to a padded cell. Two other women tried to asphyxiate themselves with shoestrings and bras."

In Florida, faced with the prospect of ten months in CM SHU, a woman attempted suicide. "I had hung myself and was quite dead when the guards cut me down. My

heart must've stopped because of the loss of involuntary functions, but still they wrapped me in a sheet and rushed me to medical and succeeded in reviving me," she recalled.

Despite being locked in a cell the size of a bathroom for the foreseeable future, Pender hopes the increased outrage about solitary confinement leads to concrete changes. What would she ask people to do?

"They can help by contacting their legislators and judges about their views on long-term solitary confinement. They can help by supporting small groups of activists and organizations who are passionate about this topic."

"Many people don't have the desire to donate two hours of their week or month to a group, but what about two hours of their monthly wages? Or the book of stamps and box of envelopes that has been collecting dust since email was invented?"

"There are lots of ways to help change the system. Whatever you choose to do, just DO something. Just having conversations with others about the subject is doing something. Someone else might volunteer to type up and format a newsletter. Help design a website. Circulate the info. Make



**ColdCrib**  
#1 JAILHOUSE CATALOG  
ISSUE #3 OUT NOW!  
3 FREE Non-Nude PHOTOS INCLUDED!  
WITH PURCHASE  
INMATES MUST SEND \$10  
TO GET YOUR OWN MULTI-PAGE  
CATALOG/MAGAZINE TO ORDER  
HUNDREDS OF LOVELY LADIES PHOTOS  
& OTHER SERVICES FOR THE INCARCERATED

ONLY \$10  
www.coldcrib.com

THE TRUTH ABOUT SAVING ON JAIL CALLS  
LEARN HOW TO GET FEMALE COMPANIONS ON THE OUTSIDE  
"CORRECTIONAL FACILITY FRIENDLY"

GET MAIL FROM FEMALE PENPALS  
GET LISTED ON OUR PENPAL SITE  
www.COLDCRIB.com  
Send your photo and info along  
with \$30 for 1 FULL year membership  
OR \$30 for Pen-Pal List of up to 50 addresses  
of our registered female PenPals

**ColdCrib communications**  
INMATES CALL CELL PHONES  
\$17/mo Unlimited Calls  
+ \$15 ONE TIME Activation Fee  
Federal, State, County & Local Facility Inmates  
Local Number Provided Same Day!

NOW INMATES CAN ORDER THEIR OWN NUMBERS!  
MAKE EVERY CALL HOME A LOCAL CALL  
NO MORE RUNNING OUT OF MINUTES!  
SEND \$3 FOR PHONE PLAN APPLICATION FORM  
OR HAVE YOUR LOVED ONES ORDER ONLINE  
www.ColdCribCommunications.com

SPECIAL OFFER  
BEST 4X6 PHOTOS  
VARIOUS BACKSHOTS & POSITIONS  
SET OF 15 (NON-NUDE) SEXY PHOTOS  
ONLY \$16  
MUST ADD \$2 S/H FOR ALL ORDERS

INMATES MUST SEND FACILITY CHECK OR MONEY ORDERS  
COLD CRIB  
PO BOX 682407  
FRANKLIN TN 37069



**Help From Outside, For Humanity Inside.**  
Offering basic services on the outside.

FINANCE & BUSINESS  
SOCIAL NETWORKING  
PARALEGAL  
ADMINISTRATIVE  
INFORMATION  
PHONE  
CREATIVE

**HFO**  
HELP FROM OUTSIDE

Help From Outside understands what you're going through. We can help you accomplish the things you need to get done but can't.

We offer:

- High standards & ethics
- Timely & professional services
- Personal touch

"HFO has excellent business etiquette and ethics."  
- T. Brown

"I like that you sent a personal letter. HFO is more personable than your competitors."  
- A. Mitchell

**WE'VE MOVED! PLEASE CONTACT US AT OUR NEW ADDRESS:**  
For a brochure and application please send a SASE to:  
Help From Outside | 2620 Bellevue Way NE #200 | Bellevue, WA 98004  
206.486.6042 | www.helpfromoutside.com

## Women in Solitary (cont.)

phone calls to organize events. Anything is better than turning the page to the next article and forgetting about us, leaving us alone in our cells," she said.

### Sent to solitary for reporting sexual assault

IT SEEMS ABSURD THAT A PERSON WHO HAS been sexually assaulted would be punished for speaking up, especially since prison policy prohibits sexual contact between staff and the people whom they guard. Yet, in many women's prisons, many of those who report rape and other forms of sexual assault by prison personnel are sent to solitary confinement.

After enduring over a year of repeated sexual assaults by a guard, Stacy Barker became one of 31 women incarcerated in Michigan who filed *Nunn v. MDOC*, a 1996 lawsuit against the Department of Corrections for the widespread sexual abuse by prison guards. The following year, Barker was repeatedly sexually assaulted by an officer who was also a defendant in *Nunn*.

After a month of silence, she reported the assaults to a prison psychiatrist. Barker was immediately placed in segregation and then transferred to Huron Valley Center, which was then a psychiatric hospital for prisoners. There, she reported that hospital attendants verbally harassed her.

In October 1997, Barker attempted suicide. She did not receive counseling or psychiatric evaluation. Instead, three male guards stripped her naked, placed her in five-point restraints (a procedure in which a prisoner is placed on her back in a spread-eagle position with her hands, feet and chest secured by straps) on a bed with no blanket

for nine hours. She was then placed on suicide watch. She reported that one of the staff who monitored her repeatedly told her he would "bring her down a few rungs."

Placing women in solitary confinement for reporting staff sexual harassment or abuse is far from rare. In 1996, Human Rights Watch found that, in Michigan, incarcerated women who report staff sexual misconduct are placed in segregation pending the institution's investigation of their cases. The placement is allegedly for the woman's own protection. The five other states investigated also had similar practices of placing women in segregation after they reported abuse.

Not much has changed in the 13 years since Human Rights Watch chronicled the pervasive and persistent sexual abuse and use of retaliatory segregation in 11 women's prisons. Former staff at Ohio's Reformatory for Women have stated that women who reported sexual abuse are subjected to lengthy periods of time in solitary confinement, where cells often had feces and blood smeared on the wall.

In Kentucky, a woman who saved evidence from her sexual assault was placed in segregation for 50 days. In Illinois, a prison administrator threatened to add a year onto the sentence of a woman who attempted to report repeated sexual assaults. She was then placed in solitary confinement.

In 2003, the Prison Rape Elimination Act (PREA) became law, ostensibly to address the widespread sexual abuse in the nation's jails and prisons. Among its recommendations was "the timely and comprehensive investigation of staff sexual misconduct involving rape or other sexual assault on inmates."

However, this has not stopped the widespread practice of utilizing solitary to

punish those who speak out. An investigation into sexual abuse at Alabama's Tutwiler Prison for Women found that women who report sexual abuse "are routinely placed in segregation by the warden."

Some prison systems have also created new rules to continue discouraging reports of staff sexual assault. At Denver Women's Correctional Facility, a woman reported that prison officials responded to PREA by creating a rule called "False Reporting to Authorities."

"A lot of us do not report any kind of staff misconduct because history has proven that any kind of reports true or false are found [by the administration] to be false," she stated. "When it was found to be false, the people were immediately found guilty and sent to administrative segregation." In some cases, a woman may not even file an official complaint but may only be speaking within earshot of another staff member.

"I didn't want to believe it, but then I experienced it first hand with a close acquaintance of mine. She had conversations with a guard and he asked sexually explicit questions about what she would be able to do in bed because of her disability and it went on for a while.

"She came to me and said she didn't want to be around him and she told an office worker about him and he ended up writing a report on her, before she could do it to him, and she was eventually questioned. I was questioned and I told the investigator that I believed her and that the officer was a pervert and flirted openly with any girl who was desperate for a man's attention.

"I told him I felt like he was a predator and shouldn't be working at a women's prison. I later found out she went to the hole and was going to be Ad Seg'd just like the

## EXECUTIVE CLEMENCY

For Info. On Sentence Reduction through  
Executive Clemency:

### NATIONAL CLEMENCY PROJECT

3907 N. Federal Highway, # 151

Pompano Beach, FL 33064

954-271-2304

[nationalclemencyprojectinc.com](http://nationalclemencyprojectinc.com)

(35-Years of Clemency & Parole Assistance)  
(Transfers Under The Int'l Prisoner Treaty)



## Post conviction State and Federal Habeas Corpus petitions

### FOR VIRGINIA ONLY

Full review of case:

**\$2995.00**

Write to:  
Dale Jensen, Criminal Law  
Attorney  
606 Bull Run  
Staunton, VA 24401



or have someone call or go to:  
(540) 324 - 8828  
[djensencrimlaw@gmail.com](mailto:djensencrimlaw@gmail.com)  
[www.djensencrimlaw.com](http://www.djensencrimlaw.com)



others but she left on her mandatory parole to go back to court and was re-sentenced and brought back. Luckily they didn't Ad Seg her when she came back. I'm not sure why they dropped it but maybe it was because she was gone for a while."

Under PREA, those accused of sexual assault are sent to solitary confinement even before the charges are proven. In California, Amy Preasmyer was placed in solitary confinement after being accused of sexual assault by another woman.

"I was abruptly removed from my bed late in the evening to face an extended wait and then a transfer to Ad-Seg," she reported. "Upon entering my newly assigned chambers at 3 a.m., I found the toilet was backed up and a DD3 (EOP) [person with a disability] had urinated everywhere prior to me, leaving extremely unsanitary conditions and aromas." She was not allowed to access supplies that would allow her to clean or disinfect her cell.

Although she was eventually cleared of all charges, being in Ad Seg forced her to miss her final examinations for college. During that time, she also lost the privilege to shop, walk outside or even call home.

Preasmyer reflected on the double standard between prison staff and prisoners accused under PREA: "Had this woman falsely accused an officer, would that officer have been arrested and forced to relinquish rights pending results of the investigation into the accusation? Would the employee suffer a wage loss? Would disciplinary action and consequences be rendered to the accuser once charges turned out to be baseless?"

After reading Preasmyer's article in her segregation cell in Indiana, Sarah Jo Pender, who has spent five years in solitary confinement after an officer helped her escape, agreed. She noted that, although the officer who helped her escape had had sex with her and seven other women in the prison, he evaded a sexual misconduct charge as part of a plea bargain.

He was sentenced to seven years in prison and released after two years. As far as Pender knows, he spent no time in solitary confinement. On the other hand, the superintendent at the Indiana Women's Prison has told her that she will remain in segregation so long as she is incarcerated so that he knows where she is at any given time.

We might know more about the preva-

lence of isolating those who report sexual abuse if that threat didn't hang over their heads. But it does, bullying who-knows-how-many into silence. As one woman in Texas reported:

"When officers and inmates are found to be involved, the common course of action here is to move her to another facility. If she consented in any way, she will be placed in Ad Seg. Being moved with the jacket of a prior officer relationship can make time very difficult. And, if they found any reason to write the inmate a major case, it also costs her at least a one-year parole set-off. Being moved, time in isolation, a label and a set-off? Those are powerful motivations to keep a girl quiet."

*Victoria Law is a writer, photographer and mother. She is the author of Resistance Behind Bars: The Struggles of Incarcerated Women (PM Press, 2012). Her writings, many of which focus on gender, incarceration and resistance, have appeared in Bitch, HipMama, The Nation, SolitaryWatch and Truthout. This article was originally published in two parts by SolitaryWatch (www.solitarywatch.com) in December 2013; it is reprinted with permission of the author.*

msp | LAW



**Michael Soukup**  
Licensed in Wisconsin and Illinois

**Matthew Pinix\***  
Licensed in Wisconsin

## Appealing a Conviction? Hire an Appellate Attorney.

You wouldn't hire a **heart surgeon** to perform **brain surgery**. Don't hire a **trial attorney** to handle **your appeal**. Hire someone who focuses on **criminal appeals**.

Hire the **Law Office of Matthew S. Pinix**, attorneys with more than 10-years' combined experience handling **criminal appeals** in **Wisconsin** and **Illinois**.

---

**Law Office of Matthew S. Pinix, LLC**  
1200 East Capitol Drive, Suite 220  
Milwaukee, Wisconsin 53211  
(414) 963-6164  
www.pinixlawoffice.com

- » Rated by Super Lawyers\*
- » Rated by avvo.com
- » Better Business Bureau accredited



**\$9.95** per month

**\*UNLIMITED JAIL CALLS\***  
**"WE BEAT ALL OUR COMPETITORS"**  
**SWITCH TO US TODAY!!**

- No Contracts
- No Credit Checks
- No Equipment to buy



**LOWER THE CALL RATES FOR:**

- GLOBAL TEL LINK
- SECURUS
- V-CONNECT
- PAYTEL
- ICSOLUTIONS
- VAC
- PLUS MORE

**FEDERAL \* STATE \* COUNTY**

SAME DAY ACTIVATION - NO PER MINUTE CHARGES ON OUR END. JUST \$9.95 A MONTH!

**GET A LOCAL NUMBER TODAY**  
**888-776-2012**

**www.JailCallsUSA.com**

Online Payments Accepted   

# Tennessee Senate Judiciary Committee Holds Hearings on Criminal Justice Reform

ON SEPTEMBER 15 AND 16, 2014, while Tennessee's General Assembly was out of session, the Senate Judiciary Committee held hearings on criminal justice reform – the first time a legislative body in the state has comprehensively addressed that topic for at least a decade. The hearings were chaired by Senator Brian Kelsey, and speakers testified on issues ranging from the history of sentencing in Tennessee to the state's growing prison population, high crime rate and potential solutions to those problems.

According to the FBI, Tennessee had the highest violent crime rate in the nation based on 2012 statistics.

Criminal defense attorney David Raybin, a former district attorney and former member of the Tennessee Sentencing Commission (abolished in 1995), who helped develop Tennessee's criminal sentencing statutes, testified about the history of sentencing laws in the state, including the Class X laws and 1989 Sentencing Reform Act. He noted that the Sentencing Commission had made a number of recommendations that were ignored by lawmakers.

Others who testified included officials from the district attorney's office and attorney general's office. The DA's office complained that criminal sentences in Tennessee mislead the public and victims, as a ten-year sentence does not mean defendants will serve 10 years. Rather, they are eligible for parole at 30% of their sentence for standard range 1 offenders, and those with "truth in sentencing" sentences may serve 85% rather than 100% of their sentences. Further, life sentences do not mean life in prison, as life-sentenced prisoners can be paroled after serving 51 calendar years. With respect to parole, the DA's office did not mention that the average parole grant rate in Tennessee is around 36%.

Two members of the Vera Institute of Justice, Rebecca Silber and Nancy Fishman, testified about their review of Tennessee's criminal justice system and offered suggestions for reforms; the Vera Institute provides research and technical assistance to government agencies to help improve justice systems, policies and practices.

Marc Levin, director of the Center for Effective Justice at the Texas Public Policy Foundation and policy director of Right on Crime, spoke about what Texas has done to reduce its prison population through criminal justice reforms – although Texas presently has the largest state prison population in the nation.

Levin observed that 90% of Tennessee's corrections budget goes to the state's prison system instead of probation, drug courts or community supervision programs. "Our view is, the pendulum's swung a little bit too far," he stated.

Other speakers at the Committee hearings included Anderson County Mayor Terry Frank, Tennessee ACLU director Hedy Weinberg, Knoxville police chief David Rausch, commissioners of the Department of Mental Health and Department of Safety, Tennessee Department of Correction (TDOC) Commissioner Derrick Schofield, the director of the Tennessee Association of Professional Bail Agents, Court of Criminal Appeals Judge John Everett Williams, the director of the Heritage Foundation's Edwin Meese III Center for Legal and Judicial Studies, and Tennessee State Employees Association (TSEA) director Tommy Francis.

Commissioner Schofield discussed the need to reduce recidivism rates, while Francis spoke about challenges faced by TDOC employees represented by the TSEA. Charlie White, director of the Association of Professional Bail Agents, mainly addressed the contributions of the for-profit bail industry in terms of providing a means for people to get out of jail (those who can afford to make bond, that is).

Vanderbilt University Professor Chris Slobogin testified three times over the two-day hearings and discussed what other states have done in terms of criminal justice reform – including pretrial release initiatives, de-criminalization, expanding re-entry and community corrections programs, and enacting probation and parole reforms. He also presented recommendations from the Tennessee Consultation on Criminal Justice – a faith-based group working on reform of the state's justice system.

Those recommendations included: 1) ending the practice of sending technical probation and parole violators to prison when short jail stays of 2 to 3 days would be more effective; 2) increasing parole grant rates; 3) developing effective reentry and community supervision strategies; 4) conducting a study to examine successful programs and policies implemented in other states; 5) reinstituting the Tennessee Sentencing Commission to provide guidance to the legislature about changes to sentencing laws; 6) reinstituting the joint legislative Oversight Committee on Corrections, which was disbanded in 2011, to exercise oversight over the TDOC; and 7) ensuring that the TDOC has current and accurate data with respect to recidivism rates and other statistics.

Additionally, Professor Slobogin cited the need to re-evaluate the role of using privately-operated prisons in Tennessee and recommended that the state consider justice reinvestment initiatives, whereby savings from criminal justice policies that reduce the prison population are reinvested in communities affected by high incarceration rates – such as job creation programs and re-entry programs.

Overall, there was consensus that reforms are needed in Tennessee's criminal justice system, including changes in sentencing laws, alternatives to incarceration and the need to address a growing prison population – which is currently around 21,180 in TDOC facilities plus another 8,700 convicted felons in local jails. The state recently contracted with Nashville-based Corrections Corporation of America to house prisoners at a 2,500-bed facility in Trousdale County that is expected to open in 2015. CCA already holds one-quarter of the state's prison population in privately-operated facilities.

PLN managing editor Alex Friedmann, a member of the Tennessee Consultation on Criminal Justice, attended the Senate Judiciary Committee hearings. ■

Sources: *The Tennessean*, *USA Today*, [www.hollinslegal.com](http://www.hollinslegal.com), *Tennessee Senate Judiciary Committee hearings*

# PLN FUNDRAISER 2014



*Please Support Prison Legal News  
and the  
Human Rights Defense Center!*



Prison Legal News, a project of the non-profit Human Rights Defense Center, cannot fund its operations through subscriptions and book sales alone. We rely on donations from our readers and supporters – like you!

PLN conducts just one fundraiser a year; we don't bombard our readers with donation requests, we only ask that if you are able to contribute something to our important work, please do so. Every dollar counts and is greatly appreciated and will be put to good use. No donation is too small, even books of stamps!

## Where does your donation go? Here's some of what we've done in the past year:

- HRDC, a co-founder and leader of the Campaign for Prison Phone Justice, was instrumental in getting the Federal Communications Commission to reduce the cost of prison phone calls, which the FCC did when caps on interstate prison phone rates went into effect in February 2014!
- PLN settled censorship suits against jails in Ventura County, California; Upshur and Comal County, Texas; and Kenosha County, Wisconsin. In all of those cases, the jails agreed to change their mail policies to allow prisoners to receive PLN and other correspondence.
- PLN has other censorship lawsuits pending against the Nevada DOC, the Florida DOC and jails in Texas, Tennessee, Virginia, Arizona, Michigan, Georgia and Florida.
- PLN settled a wrongful death suit brought by the family of a Washington state prisoner who died due to inadequate medical care, and settled a lawsuit filed on behalf of a former prisoner who lost her baby after guards at a CCA-run jail in Tennessee delayed sending her to a hospital.

## With your help we can do more! Please send your donation to:

**Prison Legal News, P.O. Box 1151, Lake Worth, FL 33460**

Or call PLN's office at 561-360-2523 and use your credit card to donate.

Or visit PLN's website at [www.prisonlegalnews.org](http://www.prisonlegalnews.org) and click on the "Donate" link.

## PLN Support Gifts

### Gift option 1

As a token of our gratitude for your support, we are providing the PLN card when making a donation of \$50. The card is hand embroidered by women prisoners in Bolivia who are paid a fair wage for the cards to help support their families.



### Gift option 2

In recognition of your support, we are providing the PLN hemp tote bag when making a donation of at least \$75. Handmade in Vermont using hemp fiber. Carry books and groceries stylishly and help end the war on drugs!



### Gift option 3

To show our appreciation for your support, we are providing the following selection of books for you to choose from when making a donation of \$100. Donations of \$100 or more can choose one free title. Each \$100 donation entitles you to another free title; i.e., donate \$500 and you get five books! \$1,000 and you get everything on the page! Please circle the books you want and send the corresponding donation amount.



### Gift option 4

As a thank you gift for your support, we are providing the entire PLN anthology of critically acclaimed books on mass imprisonment signed by editor Paul Wright! (The Celling of America, Prison Nation and Prison Profiteers) plus the PLN hemp tote bag to carry the books in when making a donation of \$250 or more.



# How the Courts View ACA Accreditation

by Alex Friedmann

**T**HE AMERICAN CORRECTIONAL ASSOCIATION (ACA), a private non-profit organization composed mostly of current and former corrections officials, provides accreditation to prisons, jails and other detention facilities.

According to the ACA, "Accreditation is a system of verification that correctional agencies/facilities comply with national standards promulgated by the American Correctional Association. Accreditation is achieved through a series of reviews, evaluations, audits and hearings."

To achieve accreditation a facility must comply with 100% of applicable mandatory standards and at least 90% of applicable non-mandatory standards. Under some circumstances, the ACA may waive certain accreditation standards. There are different standards for different types of facilities, such as adult correctional institutions, jails, juvenile detention facilities and boot camp programs.

The standards are established by the ACA with no oversight by government agencies, and the organization basically sells accreditation by charging fees ranging from \$8,100 to \$19,500, depending on the number of days and auditors involved and the number of facilities being accredited. [See, e.g.: *PLN*, Aug. 2014, p.24].

The ACA relies heavily on such fees; it reported receiving more than \$4.5 million in accreditation fees in 2011 – almost half

its total revenue that year. The organization thus has a financial incentive to provide as many accreditations as possible.

Notably, the accreditation process is basically a paper review. The ACA does not provide oversight or ongoing monitoring of correctional facilities, but only verifies whether a facility has policies that comply with the ACA's self-promulgated standards at the time of accreditation. Following initial accreditation, facilities are re-accredited at three-year intervals.

As a result, some prisons have experienced significant problems despite being accredited. For example, the Otter Creek Correctional Center in Kentucky, operated by Corrections Corporation of America (CCA), was accredited by the ACA in 2009 when at least five prison employees were prosecuted for raping or sexually abusing prisoners. [See: *PLN*, Oct. 2009, p.40]. Kentucky and Hawaii withdrew their female prisoners from Otter Creek following the sex scandal, but the facility did not lose its ACA accreditation. The prison has since closed.

The privately-operated Walnut Grove Youth Correctional Facility in Mississippi was accredited by the ACA even though the U.S. Department of Justice found "systemic, egregious practices" at the facility, including "brazen" sexual activity between staff and offenders that was "among the worst that we've seen in any facility any-

where in the nation." When approving a settlement in a class-action lawsuit against Walnut Grove in 2012, a U.S. District Court wrote that the facility had "allowed a cesspool of unconstitutional and inhuman acts and conditions to germinate, the sum of which places the offenders at substantial ongoing risk." [See: *PLN*, Nov. 2013, p.30].

More recently, the ACA-accredited Idaho Correctional Center, operated by CCA, has been cited for extremely high levels of violence, understaffing and fraudulent reporting of staffing hours. A video of CCA guards failing to intervene while one prisoner was brutally beaten by another has been widely circulated. CCA was held in contempt by a federal court in September 2013 for violating a settlement in a class-action lawsuit against the facility, and a separate suit alleges that CCA employees collaborated with gang members to maintain control at the prison. The state took control of the Idaho Correctional Center on July 1, 2014 and the FBI is currently conducting an investigation into CCA's staffing fraud. [See: *PLN*, Oct. 2013, p.28; May 2013, p.22; Feb. 2012, p.30]. Regardless, the facility remains accredited by the ACA.

Prisoners who litigate prison and jail conditions cases sometimes try to raise claims related to violations of ACA standards, even though the standards



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription! Quarterly drawing WINS \$100! (Void in New York) (Last Quarter's winner from Somers, CT.)

**TELL YOUR FRIENDS! ACT NOW!!**

**PO Box 2063 • Fort Walton Beach FL. 32549**  
**[www.InmateMagazineService.com](http://www.InmateMagazineService.com)**

## Inmate Magazine Service





alone do not create enforceable rights. On the other side of such lawsuits, the ACA says the benefits of accreditation for corrections officials include “a stronger defense against litigation through documentation and the demonstration of a ‘good faith’ effort to improve conditions of confinement.”

But how do the courts view ACA accreditation – and comparable accreditation of prison and jail medical services by the National Commission on Correctional Health Care (NCCHC) – both in terms of claims alleging violations of accreditation standards and as a defense by prison officials?

The U.S. Supreme Court noted in *Bell v. Wolfish*, 441 U.S. 520, 543 n.27 (1979) that accreditation does not determine constitutionality. With respect to standards established by organizations such as the American Correctional Association, the Court wrote: “[W]hile the recommendations of these various groups may be instructive in certain cases, they simply do not establish the constitutional minima; rather, they establish goals recommended by the organization in question.”

In *Grenning v. Miller-Stout*, 739 F.3d 1235, 1241 (9th Cir. 2014), the defendants contended that the level of lighting in a prisoner’s cell “passed the national accreditation standards of the ACA....” However, the Ninth Circuit said it was “unable to determine ... the significance of the ‘accreditation’ by the ACA. We are not informed of the standards of the ACA, nor are we informed about the thoroughness of the testing performed” at the prison. The mere fact of ACA accreditation did not entitle the defendants to summary judgment on the prisoner’s Eighth Amendment claim. [See article on p.40].

The Fifth Circuit stated in *Gates v. Cook*, 376 F.3d 323, 337 (5th Cir. 2004) that it was “absurd to suggest that the federal courts should subvert their judgment as to alleged Eighth Amendment violations to the ACA whenever it has relevant standards. Additionally, the ACA’s limited inspections are not be [sic] binding as factual findings on the magistrate or on this court. While compliance with ACA’s standards may be a relevant consideration, it is not per se evidence of constitutionality.”

Further, in a lawsuit challenging inadequate medical care in the jail system in Maricopa County, Arizona, a federal district court wrote: “The Board Defendants argue that because the parties stipulated to incorporate in the Amended Judgment the ‘essential’ standards for health services in jails of the National Commission on Correctional Health Care (‘NCCHC’), Correctional Health Services adopted policies conforming to NCCHC standards, and Correctional Health Services substantially complies with all of the ‘essential’ NCCHC standards, they have met their burden in proving there are no current and ongoing violations of pretrial detainees’ federal rights.”

However, “The Court decides independently whether there are current and ongoing violations of pretrial detainees’ constitutional rights and does not rely on any determinations made by an accrediting organization such as the NCCHC. The NCCHC ‘essential’ standards do not specifically focus on all of pretrial detainees’ constitutional rights.” Additionally, the district court noted that “Some of the NCCHC ‘essential’ standards

## AHRONY, GRAHAM, & ZUCKER, LLP

### A POST-CONVICTION LAW FIRM

**Appeals**

**Habeas Corpus  
Writs (Factual  
Innocence)**

**Parole Hearings**

**SB 260 Hearings**

**MDO Hearings**

**Re-Sentencing**



**Bruce Zucker**

**Orly Ahrony**

**Ian Graham**

**Probation Violations**

**Rap Sheet Correction**

**Prison &  
Parole Issues**

**115 Discipline Issues**

**California & Federal  
Courts**

12400 WILSHIRE BLVD. SUITE 400 • LOS ANGELES, CA 90025

TEL. (310) 979-6400 • WWW.AHRONYGRAHAM.COM

California Cases Only • Unsolicited Original Documents Will Not Be Returned

This is an Advertisement for Legal Services

## Courts on ACA (cont.)

address administrative functions and are not narrowly tailored to meet constitutional requirements,” and “[a]lthough the NCCHC standards may be helpful for a jail, the Court makes its findings based on the Eighth and Fourteenth Amendments of the United States Constitution.”

The court found that healthcare services provided by the defendants remained unconstitutional despite NCCHC accreditation. See: *Graves v. Arpaio*, 2008 U.S. Dist. LEXIS 85935 (D. Ariz. Oct. 22, 2008) [*PLN*, Jan. 2010, p.43; May 2009, p.28].

In Texas, a federal district court commented on accreditation of Texas Department of Criminal Justice (TDCJ) facilities by both the ACA and NCCHC.

“While TDCJ’s participation in the ACA accreditation process is to be commended, accreditation, in itself, is not a clear indication that TDCJ is properly following its policies and procedures. Experts from both parties recognized the limitations of ACA accreditation,” the court wrote, noting “that ACA accreditation is a tool, but not a constitutional standard.”

The district court also remarked that one expert had “testified to a number of examples where a prison system was accredited by the ACA, but was, nevertheless, held by a court to be operating in an

unconstitutional fashion, including prisons in Florida and the San Quentin prison in California.”

With respect to accreditation by the NCCHC, the district court stated: “Rather than analyze the actual quality of the medical care received by inmates, the NCCHC’s evaluation focuses on the written standards, policies, protocols, bureaucracy, and infrastructure that makes up the medical care system [cite omitted]. Further undermining defendants’ attempt to use NCCHC accreditation as a proxy for a certification of the constitutionality of its medical care is the fact that at least two of the plaintiffs’ experts who testified about profound shortcomings in the quality of care in TDCJ-ID also work as NCCHC accreditors.... While NCCHC accreditation does bolster defendants’ claims that its medical care system is functioning constitutionally, the accreditation simply cannot be dispositive of such a conclusion.” See: *Ruiz v. Johnson*, 37 F.Supp.2d 855, 902, 924-25 (S.D. Tex. 1999), *rev’d on other grounds*, 243 F.3d 941 (5th Cir. 2001).

A U.S. District Court in Puerto Rico also found that prison medical care was unconstitutional despite accreditation by the NCCHC, with the court noting “the National Commission on Correctional Health Care in 1992 had accredited the medical care programs at four prisons and provisionally accredited four more, with several additional prisons under consider-

ation for accreditation. However, one of the monitor’s consultants, Dr. Ronald Shansky, found noncompliance with at least one essential standard at every institution the Commission had accredited.” The court further observed that “During this investigation, Department of Health personnel provided the monitor’s staff with credible evidence that other employees had falsified documents in support of accreditation.” See: *Feliciano v. Gonzalez*, 13 F.Supp.2d 151, 158 n.3 (D.P.R. 1998).

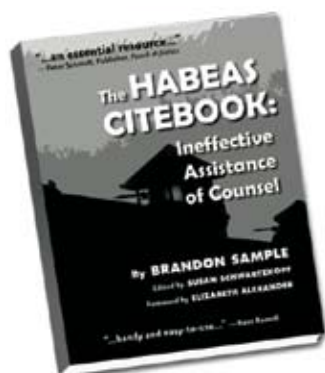
A Florida district court addressed ACA accreditation in *LaMarca v. Turner*, 662 F.Supp. 647, 655 (S.D. Fla. 1987), *appeal dismissed*, 861 F.2d 724 (11th Cir. 1988), stating: “Defendants make much of the relevance to this litigation of the accreditation of prisons and [Glades Correctional Institution] in particular by the American Correctional Association. The Magistrate found that the GCI accreditation had ‘virtually no significance’ to this lawsuit because accredited prisons have been found unconstitutional by courts. Having considered the GCI accreditation along with the remainder of the evidence, the undersigned district court finds it of marginal relevance in this case.”

And in a challenge to the adequacy of the law library at the Buena Vista Correctional Facility in Colorado, a district court stated it was “simply ludicrous” for the defendants to argue they were entitled to summary judgment because “the American Correctional Association formally accredited” the facility and ACA standards address prison law libraries. See: *Boulies v. Ricketts*, 518 F.Supp. 687, 689 (D. Colo. 1981).

However, other courts have taken ACA accreditation into consideration when determining the constitutionality of policies or practices at correctional facilities, such as in *Yellow Horse v. Pennington County*, 225 F.3d 923, 928 (8th Cir. 2000) (suicide prevention procedures) and *Grayson v. Peed*, 195 F.3d 692, 697 (4th Cir. 1999) (death of restrained prisoner).

Therefore, incarcerated litigants should use caution when basing arguments on violations of accreditation standards rather than violations of constitutional or statutory rights, and should note the above case law when corrections officials raise accreditation as a defense in lawsuits related to conditions of confinement in prisons and jails. ■

Additional source: [www.aca.org](http://www.aca.org)



## FREE BOOK!

Get *The Habeas Citebook* with purchase of a 4-year subscription to *Prison Legal News*. Offer good for new subscriptions and renewals.

Special limited time only! All sales final and no refunds. Order now for this great deal worth \$49.95.

**Prison Legal News** • PO Box 1151 • Lake Worth, FL 33460  
Tel [561] 360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

# States Renewing Their Prison Phone Contracts

*As state DOCs renew or rebid their prison phone contracts, you can help urge them to lower intrastate phone rates and eliminate commission kickbacks!*

*The Campaign for Prison Phone Justice needs your help in:*

**\*\*\*\* North Dakota, Oklahoma, Washington \*\*\*\***

The Departments of Corrections in the above states are in the process of re-bidding or renewing their prison phone contracts. Most DOCs receive a commission (kickback) on revenue generated from calls made by prisoners, which results in excessively high phone rates. Although the FCC voted last year to cap the costs of interstate (long distance) prison calls, which went into effect on February 11, 2014, the order does not apply to intrastate (in-state) calls. An estimated 85% of prison phone calls are in-state. This is an opportunity to ask DOCs to forgo commissions and ensure their new prison phone contracts are based on the lowest cost to those who pay for the calls – mostly prisoners' families.

## **Take Action NOW! Here's What YOU Can Do!**

Ask your family members and friends to write, email, call and fax the DOC and the governor's office (addresses and contacts are listed below), requesting that the DOC: 1) forgo commission payments when re-bidding or renewing its prison phone contract, and 2) base the new contract on the lowest calling costs. Lower prison phone rates should apply not just to long distance calls but also to in-state calls. For a sample letter or to easily send an email, visit the Campaign for Prison Phone Justice's website and click on the "Take Action" tab:

**[www.phonejustice.org](http://www.phonejustice.org)**

### **Prison phone contract information & Contacts:**

**North Dakota:** Receives a 40% kickback; existing contract expires on 10-31-2014. Charges \$6.00 for a 15-minute collect intrastate call. **Contacts:** North Dakota DOC, Director Leann Bertsch, 3100 Railroad Avenue, Bismarck, ND 58502-1898; phone: 701-328-6362, fax: 701-328-6651, email: lebertsc@nd.gov. Governor Jack Dalrymple, State Capitol, 600 E. Blvd Ave., Bismarck, ND 58505-0001; phone: 701-328-2200, fax: 701-328-2205, email: governor@nd.gov

**Oklahoma:** Receives an effective kickback of 76.6%; existing contract expires 12-31-2014. Charges \$3.00 for a 15-minute collect intrastate call and \$3.00 for a local call. **Contacts:** Oklahoma DOC, Director Robert Patton, 3400 Martin Luther King Ave., Oklahoma City, OK 73111; phone: 405-425-2505, fax: 405-425-2578, email: terri.watkins@doc.state.ok.us. Governor Mary Fallin, Capitol Building, 2300 N. Lincoln Blvd. Rm. 212, Oklahoma City, OK 73105; phone: 405-521-2342, fax: 405-521-3353, email: [www.ok.gov/governor/#](http://www.ok.gov/governor/#) (click "E-mail Governor Fallin" under the "Contact the Governor" tab)

**Washington:** Receives a 51% kickback; existing contract expires on 12-31-2014. Charges \$3.50 for a 15-minute collect intrastate call and \$3.50 for a collect local call. **Contacts:** Washington DOC, Secretary Bernard Warner, P.O. Box 41100, Mail Stop 41100, Olympia, WA 98504-1100; phone: 360-725-8213, fax: 360-664-4056, email: doccorrespondenceunit@doc.wa.gov. Governor Jay Inslee, P.O. Box 40002, Olympia, WA 98504-0002; phone: 360-902-4111, fax: 360-753-4110, email: <https://fortress.wa.gov/es/governor> (use online email form)

# Leading with Conviction: JustLeadershipUSA

by Glenn Martin and Sasha Graham

FOR DECADES, ADVOCATES AND SCHOLARS alike have publicly decried the crippling financial and human costs of mass incarceration. Today their calls for reform are amplified by an emerging bipartisan consensus that current incarceration trends are unsustainable, ineffective and increasingly harmful to individuals, families, communities and society as a whole.

Several states, including New York, New Jersey and California, have prioritized criminal justice reforms intended to reduce excessive criminalization and incarceration.<sup>1</sup> Last year, 300 bills were introduced on the state level that promoted smarter, healthier approaches to crime prevention and reductions in our overreliance on incarceration.<sup>2</sup> Yet despite this abundance of political will and a growing legion of zealous advocates, we have yet to realize significant and widespread reform of our criminal justice system. In fact, recent successes notwithstanding, the justice system continues to operate at full throttle, consuming millions of individuals, countless families and entire communities.

The problem is that for far too long the individuals and communities directly impacted by mass incarceration have been glaringly absent – or worse, omitted – from the conversation. Ironically, in a movement

established in their name, the currently and formerly incarcerated are often relegated to roles of service provision and symbolism. It is not enough that advocates for reform be genuine believers in the depravity and inhumanity of our carceral policies. The failure of policy makers, advocates and service providers to invest time and energy into cultivating meaningful ways to work collaboratively with people and communities most impacted by the criminal justice system has expunged the expertise needed to achieve substantial reform.

No community wants, needs or understands the urgency of sweeping reform more than those held captive by the disastrous policy failures of a broken justice system. These individuals not only bring a valuable and culturally-competent frame to the discussion, but “living closer to the problem” often means that they have given significant thought to possible solutions. In what appears to be a watershed moment for criminal justice reform we need these communities of the currently and formerly incarcerated to instruct us on what needs to change, where we can improve and what strategies we need to implement.

JustLeadershipUSA is dedicated to putting new and authentic drivers in the seat of the reform locomotive. We know that it is not for lack of intelligence or hard work that formerly incarcerated people rarely assume roles of leadership, but a lack of access to resources and opportunities. We believe that everyone has the capacity to lead, though not everyone is exposed to opportunities that teach them critical leadership skills. Through our leadership development training program we instruct formerly incarcerated people with proven leadership capacity in their respective

careers and communities, to drive decarceration efforts around the country.

Together with the Center for Institutional and Social Change at Columbia University, JustLeadershipUSA has collaborated with over 50 formerly incarcerated leaders to research, develop and employ a dynamic and inclusive leadership model. Our cohort-based training practices include peer coaching sessions, peer group learning projects and individualized one-on-one sessions, to produce a sustainable leadership community that fosters ongoing development and support long after the program is complete.

While we believe those closest to the problem are closest to the solution, we know this does not exempt the rest of us from playing our part in correcting the wanton harm produced by four decades of failed criminal justice policy. Contrary to popular sentiment, mass incarceration is neither a minority issue nor a poor people’s issue, but an American issue. The criminal justice system is a menacing threat to our democracy – squandering the potential of millions of Americans, destroying families and communities, and wasting billions of taxpayer dollars each year.

At JustLeadershipUSA, we know that the presence of allies has been crucial to every movement against systemic injustice (the abolition of slavery, the women’s rights movement, the Civil Rights movement, etc.). As such, we employ a membership model to encourage people of all backgrounds, including those who are incarcerated, to band together against policies that are wasteful and ineffective and to incentivize investment in practices that are fairer, smarter and morally aligned with our values.

**PENACON.COM**

Helping the incarcerated community gain connections around the world!

Post your profile on an easy to navigate website for millions of viewers to see. Gain new penpals and look forward to receiving mail!

One Year Ad Only \$35  
Until Release Date Ad \$95

Request a form today!  
Send a S.A.S.E. to:  
Penacon.com  
P.O. Box 1037  
Edna, TX 77957

USE CODE  
PLN5OFF  
FOR \$5 OFF



## WHEN IT IS YOUR FAMILY’S FUTURE, EXPERIENCE MATTERS

### STATE AND FEDERAL POST-CONVICTION AND APPEALS

Licensed since 1995, hundreds of appellate briefs and habeas petitions, capital qualified for habeas and appeals in Texas and U.S. Southern District of Texas, Motions for New Trial, Rule 35 and 60b motions, re-sentencing and arrest of judgment.

Call or write the Law Offices of Patrick F. McCann, 713-223-3805.  
909 Texas Ave, Ste 205, Houston, Texas 77002 • writlawyer@justice.com

**Serious financial inquiries only.**



Our founder, Glenn E. Martin, a national criminal justice reform advocate and formerly incarcerated individual, created JustLeadershipUSA because he believes one of the most unjust features of the existing system is that the millions of men and women in America's prisons have been barred from making decisions regarding their own lives. JustLeadershipUSA knows that systemic change is accelerated and amplified through strength in numbers. We ask that people who are currently incarcerated and the more than 60 million American adults who have criminal records<sup>3</sup> become members of our movement to elevate the voices of those impacted by incarceration and articulate their own salvation, as only they can.

By joining JustLeadershipUSA you are safeguarding against the adoption of policies contrary to your best interests and the health and well-being of your families and communities. As a member your contributions will fund our efforts to replace mandatory sentencing laws with more flexible and individualized guidelines, eliminate the use of "three-strike" laws, eliminate tough-on-crime-era truth in sentencing laws, expand labor market opportunities for formerly incarcerated people and encourage the increased use of prison population reduction strategies such as executive pardons, parole release, clemency and merit time. Together, with a united voice and a united vision for reform, we can halve the U.S. prison population by 2030 and afford those who are incarcerated equal opportunities to be part of the solution.

To become a member of JustLeadershipUSA, please send \$10.00 (the cost of annual membership) to JustLeadershipUSA at 112 West 34<sup>th</sup> Street, Suite 2104, New York, NY 10120. Also, please spread the word about JustLeadershipUSA; ask your family and friends to become members, too! Together we can redefine JUSTICE.

For more information, visit our website: [www.justleadershipusa.org](http://www.justleadershipusa.org). ■

1 Mauer, Marc, "Fewer Prisoners, Less Crime: A Tale of Three States," The Sentencing Project, July 2014.

2 Cockburn, Chloe, "Ending Mass Incarceration: Progress Report," ACLU, May 28, 2014; [www.aclu.org/smart-justice-fair-justice/ending-mass-incarceration-progress-report](http://www.aclu.org/smart-justice-fair-justice/ending-mass-incarceration-progress-report).

3 Rodriguez, Michelle and Maurice Emsellem, "65 Million Need Not Apply: The Case for Reforming Criminal Background Checks for Employment," National Employment Law Project, March 2011.

## Washington State: Injunction Entered Against Lewis County in PLN Censorship Suit

ON SEPTEMBER 10, 2014 A FEDERAL judge entered a preliminary injunction against Lewis County, Washington in a lawsuit challenging a postcard-only mail policy at the county jail.

The lawsuit, filed by Prison Legal News in April 2014, alleged that the jail's policy of restricting incoming and outgoing correspondence to postcards violated PLN's rights under the First Amendment. Further, the complaint argued that the jail's failure to provide notice to the sender when mail was censored or rejected violated the due process clause of the Fourteenth Amendment.

While county officials claimed the jail had changed its mail policy after the suit was filed, "and is now allowing news sources to distribute both publications and other forms of correspondence to prisoners," U.S. Magistrate Judge J. Richard Creatura wrote there was "substantial evidence to believe that this policy has not yet been adopted." Further, "First Amendment rights are too important to be subject to such arbitrariness," he added.

Between September and October 2013, pursuant to the jail's postcard-only policy, jailers had rejected dozens of letters sent to prisoners by PLN, including subscription brochures, book catalogs and copies of court rulings.

"The postcard-only policy drastically reduces prisoners' and other correspondents' ability to communicate. It is more than a mere inconvenience and becomes a substantial barrier to First Amendment rights," Judge Creatura stated, noting that the Washington Department of Corrections and other jail systems in the state, including those in King, Pierce and Spokane counties, do not have postcard-only policies.

The district court enjoined county

officials from "restricting incoming and outgoing prisoner mail to postcards only," from "rejecting mail to or from prisoners without providing notice to the prisoner" and from "rejecting mail from non-prisoner correspondents without providing notice to the non-prisoner correspondent." The court also required appeals of rejected mail to be referred to a jail official "other than the person who originally rejected the correspondence."

"We are pleased that the court found the constitutional violations at the jail warranted the entry of an injunction against Lewis County," said PLN editor Paul Wright. "No one is above the law or the Constitution – and sometimes it takes a federal judge to make that clear."

Jesse Wing, one of PLN's attorneys, noted that the jail's restrictive mail policy not only harmed pretrial detainees who have not been convicted, but also people in the community who want to correspond with prisoners. Communicating with the outside world is "essential to maintaining family, employment, educational and other important relationships critical for a person to productively return to society after time in jail," he said. "The court's order has a huge positive effect, helping many people."

PLN is represented by attorneys Jesse A. Wing and Katherine Chamberlain with the Seattle law firm of MacDonald Hoague & Bayless, and by Human Rights Defense Center general counsel Lance Weber. The case remains pending. See: *Prison Legal News v. Lewis County*, U.S.D.C. (W.D. Wash.), Case No. 3:14-cv-05304-JRC. ■

Sources: *HRDC press release* (Sept. 11, 2014); [www.courthousenews.com](http://www.courthousenews.com)

**inmateMAGS**.com  
formerly MyMagstore.com

**Buy 1200 SINGLE Copies of Magazines • 1200 Subscriptions • VIP Service**  
**1800 Newspapers • Payment with Stamps • Prepaid Accounts**  
 Send \$3 or 10 Stamps for **50+ Page Full Catalog** (\$3 Discount Coupon Included)

InmateMAGS.com  
4208 University Way NE  
Seattle, WA 98105

www.inmateMAGS.com  
Info@inmateMAGS.com  
206-322-6397

# Drug Courts Partner with Pharmaceutical Company to Combat Heroin, Alcohol Abuse

THE 406<sup>TH</sup> DISTRICT DRUG COURT IN Webb County, Texas has turned to a new approach for breaking the cycle of addiction related to heroin, opiate and alcohol abuse: The court formed a partnership with Irish pharmaceutical company Alkermes plc to provide a drug called Vivitrol to drug court participants.

Vivitrol is an intramuscular medication delivered once-monthly by injection. It works to block the production of endorphins, which in turn prevents the brain from producing surges of dopamine – the body's pleasure hormone. Essentially, Vivitrol prevents a person from getting high or drunk. As a result, if a heroin addict shoots up or an alcoholic takes a drink, he or she won't feel anything pleasurable – although Vivitrol is only meant to be used after a person has detoxed or stopped drinking.

A primary benefit of the drug compared to other medical treatments, such as Suboxone and methadone, is that Vivitrol is not addictive.

One dose of Vivitrol lasts 30 days, though the drug is expensive; the cost can range from \$800 to \$1,200 for a single shot. Alkermes agreed to a three-year partnership with Webb County in which the company will provide one free dose of Vivitrol to drug court participants – a \$200,000 commitment.

The court also received a \$1 million Substance Abuse and Mental Health Services Administration grant to implement a client treatment plan that includes Vivitrol and cognitive intervention. In addition, Webb County Commissioners approved a half-million dollars in November 2012 to build a new adult detoxification and residential treatment facility for drug offenders. Vivitrol will be given to people released from the residential program.

The drug is not without its critics, but has been used for three decades. Known side effects include possible liver damage or hepatitis, risk of overdose if patients continue using drugs or alcohol while taking Vivitrol, and allergic reactions and depression.

The federal government first developed the drug Naltrexone some 30 years ago to prevent heroin relapses. It was approved by the Food and Drug Administration (FDA) in pill form in 1984 as a treatment for heroin

addiction, and in 1994 for alcoholism.

But the drug required a strict regimen of daily doses. The National Institute on Drug Abuse funded research in the 1990s to develop a form of Naltrexone that could be delivered by injection. The result was Vivitrol, which was approved by the FDA in 2006 to treat alcoholism and in 2010 to treat opiate addiction.

David McCann, of the National Institute on Drug Abuse's Division of Pharmacotherapies and Medical Consequences, said a Russian study used by the FDA to grant approval found that more than one-third of Vivitrol patients – 36% – stayed drug-free and in treatment for six months, compared to less than one-fourth – 23% – of those not taking the drug.

But John Schwarzlose, who heads the Betty Ford Center in California, is among the skeptics who warn that research on Vivitrol is "spotty."

"The pharmaceutical company will have you believe it is the cure for alcoholism," Schwarzlose wrote in an email to the *St. Louis Post-Dispatch*. "But recovery is learning to live without mood-altering chemicals."

Still, testimonials of Vivitrol's success caught the ear of Gil Kerlikowske, then the head of the White House's Office of National Drug Control Policy. After visiting a clinic in St. Louis, Missouri in August 2012, Kerlikowske told the *Post-Dispatch* that Vivitrol and similar drugs represent the future of addiction treatment, which until now has relied almost exclusively on therapy or medicines that are just as addictive as the drugs they are designed to replace.

St. Louis Circuit Court Judge James Sullivan, who oversees the city's drug court, began referring offenders to Vivitrol centers instead of prison more than three years ago. He said 60 to 70 defendants on his docket are taking Vivitrol in addition to mandatory therapy in the 11-to-16-month program.

"Vivitrol has assisted us in reaching some very difficult long-term addicts and alcoholics who have not been able to benefit from listening to drug treatment programs that are focused on treatment rather than the cravings," Sullivan said.

In 2011, the *Journal of Substance Abuse Treatment* published a study in which re-

searchers examined 64 participants from Sullivan's court plus two Michigan drug courts. Half received monthly Vivitrol injections in addition to therapy; the others received only therapy.

The study, funded by Alkermes, determined that Vivitrol patients were about 57% less likely to miss drug court sessions than those who participated in therapy alone. Additionally, only 8% of those treated with Vivitrol were rearrested compared to 26% of the non-Vivitrol participants. The study estimated that keeping addicts from re-entering the criminal justice system generated savings of between \$4,000 and \$12,000 per person following an initial arrest.

Four offenders in Hocking County, Ohio are among Vivitrol's success stories. In April 2014, they were recognized for breaking their addictions in an emotional graduation ceremony attended by family and friends.

"This is not something that is easy," said Municipal Court Judge Fred Moses, who spearheaded the drive to create a Vivitrol drug court program. He put together a coalition of state and county agencies to secure funding for the program, which began in late 2012.

"It's not about the court, it's about the community and those seeking help and who want to be helped," Moses said.

Authorities in Warren County, Ohio initiated a Vivitrol pilot program in March 2014, led by Common Pleas Court Judge Robert Peeler, who had been actively seeking the medication for heroin-addicted defendants on his docket. Under an \$832,000 grant from the Ohio Department of Rehabilitation and Correction, about a dozen people are already enrolled in the program; the grant will cover a total of 120 participants.

"The goal is to try to find some alternative for these non-violent drug offenders to go somewhere other than prison," Peeler said. "Hopefully, that means back to work; they get their kids back if they've lost them. It's giving people a chance for hope; it's giving people a chance for success."

Butler County, Ohio Common Pleas Court Judge Keith Spaeth, who runs the county's specialty drug court, said state money channeled through the Butler

County Alcohol and Drug Addiction Services Board enabled him to start a Vivitrol pilot program. He observed that the results, while not conclusive, have been extraordinary.

"It's purely anecdotal at this time but there have been amazing results," Spaeth said. "People we have worked with for over a year and can't seem to make progress, suddenly they are on Vivitrol and they are like a different person. Their personality changes, and they stop using, and they get a job, and they become human."

Butler County Sheriff Richard Jones, however, has called Vivitrol programs in jails a "waste of money."

The drug court in Lane County, Oregon was the first in that state to begin a Vivitrol program, in the summer of 2014. The court received a \$38,000 grant from the Oregon Community Foundation to pay for enough doses of the drug to help the roughly 115 eligible people in the county's Adult Drug Court and Veterans Treatment Court.

"The one concrete report that they continue to hear [is] that it takes away the cravings for the addiction," stated Lane County Adult Drug Court Director Bon-

nie McIrvine. "For opiate addicts, that is the biggest draw."

Meanwhile, Webb County, Texas hopes to use its Vivitrol treatment program as a magnet to attract more funding.

"We want to use this as leverage at the state and federal level to bring in more monies for our program," said Jesse Hernandez, a licensed drug counselor, grant writer and drug court consultant.

Currently, Vivitrol programs are available in courts, jails and prisons in at least 21 states; however, as with most drug courts, participants are usually limited to non-violent, low-level offenders – even though those convicted of violent crimes would also benefit, and perhaps have the greatest need for such treatment programs.

In February 2014, Alkermes estimated net sales of Vivitrol to range from \$90 to \$100 million this year. For fiscal year 2013, net sales of the drug were \$58.1 million. ■

Sources: *Laredo Morning Times*, [www.logandaily.com](http://www.logandaily.com), [www.stltoday.com](http://www.stltoday.com), [www.thefix.com](http://www.thefix.com), <http://registerguard.com>, [www.daytondailynews.com](http://www.daytondailynews.com), [www.vivitrol.com](http://www.vivitrol.com), [www.cleveland.com](http://www.cleveland.com), [www.rttnews.com](http://www.rttnews.com)

## SUBSCRIPTION MADNESS 2014

Our Subscription Madness promotion has been so successful in the past that we have decided to offer it again!

PLN is offering a discount on blocks of 2 or 4 one-year subscriptions for any person not a current or former subscriber who has a U.S. address, whether they are imprisoned or not. Subscription Madness is the only opportunity attorneys, librarians and corrections professionals have to receive a PLN subscription at a fraction of the normal rate of \$90 per year, and for prisoner family members and concerned activists to subscribe at a steep discount from the normal rate of \$35 per year. Prisoner subscriptions are also less than the normal \$30 per year. Check out these discounts!

- **\$50 buys 2 one-year subscriptions (\$25 each)**
- **\$80 buys 4 one-year subscriptions (\$20 each)**

If you want to take advantage of Subscription Madness but are stumped for people to send them to, PLN can provide names of indigent prisoners who would love a PLN subscription. Use a separate piece of paper to order by mail, call our office to order with a credit card, or go to our website to order online. **No Renewals!** Sorry, but Subscription Madness is for new one-year subscriptions only, and cannot be used to renew or extend a current or former subscription. PLN is a 501(c)(3) non-profit. (Subscription Madness 2014 expires 12-31-2014).

**Prison Legal News, PO Box 1151, Lake Worth, FL 33460**  
**561-360-2523; [www.prisonlegalnews.org](http://www.prisonlegalnews.org)**

## SMITH'S GUIDE to HABEAS CORPUS RELIEF for State Prisoners under 28 U.S.C. §2254

Example pleadings from the initial habeas corpus petition to the final petition for a writ of certiorari. Let Smith guide you step-by-step through the federal courts with confidence. 380 pages.

\$24.95 + \$6.95 shipping & handling. In CA add \$2.18 sales tax. Sent via USPS media mail Money orders, personal or institutional checks ONLY. Send \$31.90 (In CA, \$34.08) payable to Roberts Company Send name, address, prisoner #, and payment to:  
**Roberts Company, 15412 Electronic Lane #101**  
**Huntington Beach, CA 92649**  
*Also available on Amazon.com*

## INMATE SHOPPER

Includes NFL FOOTBALL

NFL TEAM Schedules & NFL WEEK Schedules



**AMERICA'S MOST TRUSTED LARGEST & UP TO DATE GUIDE FOR INMATE SERVICES**

Sports Schedules	Non Nude Girls
Business Directory	Pen Pal Resources
LGBT Section	Gift Shops
Contest for Writers & Artists	Catalogs to Order
Articles, Tips & Facts	Sexy Photo Sellers
Resources	Typist
New Content Every Issue	Personal Assistants
Something for Everyone	Magazine Sellers
	Publishing Services

**Only \$24.99 Incl. S&H w/tracking**

⇒ Send Me the **CURRENT ISSUE** Inmate Shopper:  
 ⇒ Send Me the **NEXT ISSUE** Inmate Shopper:  
☐ March ☐ July ☐ Nov/Holiday  
 ⇒ Send Me the **CENSORED ISSUE** Inmate Shopper  
 Without Pen Pal Content & No Sexy Girls - No More Rejections

**No Order Form Needed:**  
 CLEARLY WRITE ON PAPER & SEND WITH PAYMENT TO:

**INMATE SHOPPER**

Box 533, North Dighton, MA 02764

[WWW.INMATESHOPPER.COM](http://WWW.INMATESHOPPER.COM)

# Class-Action Suit Claiming Inadequate Medical Care at Virginia Prison Set for Trial

**A** DECEMBER 2014 TRIAL DATE HAS been scheduled in a class-action federal lawsuit that could determine the future of health care for prisoners at the Fluvanna Correctional Center for Women (FCCW) in Troy, Virginia.

The suit was filed in July 2012 on behalf of five women incarcerated at Fluvanna, and names as defendants the Virginia Department of Corrections (VDOC), Armor Correctional Health Services and both VDOC and Armor officials for failing to provide constitutionally adequate medical care at FCCW. The Legal Aid Justice Center (LAJC) in Charlottesville, Virginia; the Washington, D.C. law firm of Wiley Rein, LLP and the Washington Lawyers' Committee for Civil Rights and Urban Affairs are jointly representing the plaintiffs – Cynthia B. Scott, Robinette D. Fearce, Patricia Knight, Marguerite Richardson and Rebecca L. Scott.

On July 15, 2013, the district court held that Corizon Health, Inc., of Brentwood, Tennessee, which was the contract provider for medical care in VDOC facilities prior to Armor, and which outbid Armor in May 2013 to resume its role as Virginia's correctional health care provider, could be added as a defendant.

The suit does not seek monetary damages, but rather “declaratory and injunctive relief to address and remedy the failure of FCCW, on a systematic, pervasive, and on-going basis,” to provide constitutionally adequate medical care.

An LAJC press release said the quality of health care at FCCW is so deficient that it violates the Eighth Amendment's ban on cruel and unusual punishment.

“The women suffer extreme pain for prolonged periods as a result of the refusal to provide for these women who have no other options for securing life-saving medical care,” said LAJC litigation director Abigail Turner. “Some spend months confined to wheelchairs because medical staff fail to act promptly. Some have died. The human tragedy is almost all the pain and suffering could have been prevented.”

Turner blamed the VDOC's outsourcing of prison health care to private companies as contributing to the problem. “The suffering stems directly from the poli-

cies and practices of a for-profit corporation that puts profits over people,” she said.

Turner added that she believes at least ten deaths at FCCW over the past 3 to 4 years could have been prevented had prisoners received sufficient medical treatment.

The complaint cites the failure of health care staff to treat the plaintiffs and other prisoners as examples of system-wide failures. As one example, the lawsuit describes the death of FCCW prisoner Darlene White, an acknowledged diabetic.

White went to the prison's infirmary in the early morning hours of December 21, 2011, complaining of severe headache, nausea and diarrhea. A nurse gave her a shot to relieve her nausea and sent her back to her dorm. Later that day she returned to the infirmary. A nurse checked her blood sugar and “found that it was radically elevated above normal levels,” the suit claims. She was instructed to lie on a bed, where she remained for the next day vomiting and defecating on herself without receiving care or a medical exam. A nurse did try to administer an IV to White, who was “completely non-responsive,” shortly before she died.

A second example cited in the lawsuit involves prisoner Jeanna Wright. Beginning in 2011, Wright complained for months of intense abdominal pain and rectal bleeding, but “for at least one year,” medical staff at FCCW assured her that she was “fine.” Wright was finally taken to the University of Virginia (UVA) Medical Center, where she was diagnosed with Stage IV abdominal cancer. She died only a few weeks later.

The lawsuit cites numerous other examples intended to demonstrate the inadequate care that prisoners receive – or in some cases don't receive. The LAJC claimed that despite having to pay a \$5 co-pay for sick call visits, prisoners often wait several months to see a doctor or nurse practitioner to diagnose and treat their medical needs, and that the denial of access to doctors results in medical staff refusing to examine, diagnose and treat serious medical conditions.

The complaint further alleges that Armor's medical staff have failed to provide the plaintiffs with timely referrals and treatment for specialized care such as

degenerative disc disease, severe shortness of breath, recurring throat infections and sarcoidosis – a disease that causes inflammation in the body's organs. Even when a specialist prescribes a specific course of treatment, Armor's staff regularly refuse to carry it out.

The suit also contends that prisoners with chronic illnesses, such as hypertension, diabetes, incontinence, frequent constipation, arthritis and other mobility impairments, are deprived of care as their health deteriorates.

FCCW prisoner Taylor Gilmer, 23, is one such example. When Gilmer was seven years old, doctors diagnosed her with Type 1 diabetes; her mother said that since Gilmer has been incarcerated at FCCW, medical staff have been negligent in her treatment.

Her mother claimed that FCCW health care staff misidentified Gilmer's Type 1 diabetes as Type 2, and prison officials prevented her from routinely checking her blood sugar levels.

“I'm really scared,” said her mom. “She cries to me on the phone ... she says ‘I'm losing my vision.’ She's afraid she's going to lose her feet.” She wonders what condition her daughter will be in when she is finally released in 2017. “How bad will she be by then, if she even lives? The outlook is not so good.”

Another FCCW prisoner was approved for medical clemency and released in early December 2013, after doctors at the UVA Medical Center gave her only weeks to live. Donna Kidd spent nearly ten years behind bars on charges of fraud and larceny, and suffered from hepatitis C when she was incarcerated. Barbara Kingery, her older sister, said Kidd's health quickly deteriorated once she was in prison due to poor medical care.

“They are in there paying for their mistakes, but they shouldn't have to pay with their life,” Kingery stated. “If she had gotten the proper treatment, she wouldn't be where she is now.”

The VDOC defendants filed a motion to dismiss the lawsuit, which was denied by the district court in December 2012. The suit alleges that medical care has been equally deficient under both Armor and Corizon, with Corizon underbidding its



rival by around \$17 million when the contract was rebid in 2013.

"Everything we've seen so far [indicates] more of the same from Corizon," said LJAC attorney Brenda Castaneda. "I wish the care would be better, but that's not what we're hearing from our clients and it's not what we anticipate based on past experiences." She said LJAC had petitioned to add Corizon to the lawsuit so the court could order the company to provide adequate care in the future.

"It doesn't take a rocket scientist to know that their mission is to make money," noted Hope Amezcuita, an attorney with the ACLU of Virginia. "They're a for-profit company. It may be cynical of me to say this, but you can't make more money unless you cut services and treatment and staff."

Attorneys for the plaintiffs said they were left with no other option but to sue. "Each year prisoners at Fluvanna file hundreds of grievances recounting the failure to provide appropriate medical care," said Deborah Golden, an attorney with the Washington Lawyers' Committee. "Yet, [VDOC] has not required [its outside provider] to adopt and improve medical care. By its actions and inactions, [VDOC] has shown deliberate indifference to plaintiffs' serious medical problems and needs."

In April 2014, the district court granted the plaintiffs' motion for \$15,980 in attorney's fees for having to file a motion to compel in a discovery dispute in the case, and on July 28, 2014, Corizon was dismissed from the suit upon agreement of the parties.

The company had announced its intention to withdraw from its \$76.5 million contract with the VDOC effective October

1, 2014, citing costs as a factor. Armor will resume medical care in Virginia prisons at that time on an interim basis; as Corizon will no longer be subject to declaratory or injunctive relief, it was dismissed as a defendant.

A motion to certify a class in the case remains pending, and a jury trial is scheduled for December 1, 2014. See: *Scott v. Clarke*, U.S.D.C. (W.D. Va.), Case No. 3:12-cv-00036-NKM.

Sources: *www.newsplex.com*, *www.justice4all.org*, *www.c-ville.com*, *www.wvtf.org*, *www.dailyprogress.com*

## Professional Paralegal Services

"You Deserve Due Diligence, Not Just Due Process."



### PPS Is Prepared To Offer You:

- High quality parole packages with color photos -- \$250.00

#### This includes:

- communicating with family and friends to help you coordinate your support system;
- working closely with our clients in editing their package to maximize their potential for parole; and
- explaining to family and loved ones how the parole process works.

- PPS also assists in obtaining court documents, case law, and legal records; \$40.00 min. plus the cost of the records

- Explaining to families and loved ones the processes of prison life;

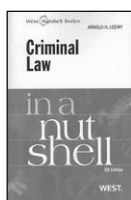
Let me use my behind-the-bars experience to help get you home

#### Gary Hunter

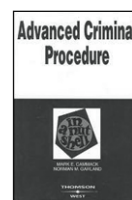
411 McCauley Blvd  
San Antonio, TX 78221

(210) 422-3685 Fax (210) 922-4348  
letstalknowandlater@gmail.com

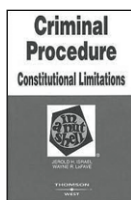
## New Titles Available in PLN's Bookstore



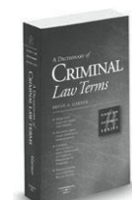
**Criminal Law in a Nutshell**, by Arnold H. Loewy,  
5th edition, 387 pages. **\$43.95**



**Advanced Criminal Procedure in a Nutshell**,  
by Mark E. Cammack and  
Norman M. Garland,  
2nd edition, 505 pages. **\$43.95**



**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFave,  
7th edition, 603 pages. **\$43.95**



**A Dictionary of Criminal Law Terms (Black's Law Dictionary® Series)**, by Bryan A. Garner, 768 pages. **\$33.95**

## Pen Pals for Prisoners

Your ad on the Internet worldwide:

One year for \$9.95. Mail name &

address for FREE order form or online:

**www.PrisonerPal.com**

PO Box 19689

Houston, TX 77224

- ☐ Criminal Law in a Nutshell ☐ Advanced Criminal Procedures in a Nutshell ☐ Criminal Procedure  
☐ Dictionary of Criminal Law Terms

Amount enclosed (add \$6 S&H for orders under \$50; free shipping over \$50) \_\_\_\_\_

By ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_



**PRISON LEGAL NEWS**

PO Box 1151 • Lake Worth, FL 33460

Tel [561] 360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

# Prison and Jail Phone Reforms Needed in New Jersey

by Karina Wilkinson

**T**WO PRISON PHONE SERVICE PROVIDERS, Global Tel\*Link and Securus, continue to overcharge prisoners and their families for calls made from prisons and jails in New Jersey. While federal regulations capped interstate (long distance) calls from correctional facilities beginning in February 2014, the State of New Jersey has allowed a grave injustice to continue by permitting companies to charge high rates and allowing county jails to accept commissions on in-state calls ranging from 50% to 70%. Such commissions amount to legal “kickbacks” that let phone companies share profits with state and local governments at the expense of those who can least afford it.

Prior to the Federal Communication Commission’s order capping interstate phone rates, charges of \$.33 per minute from New Jersey state prisons and as high as \$15.00 for 15-minute calls from county jails have translated to hundreds and even thousands of dollars of debt for prisoners and their families. New Jersey Advocates for Immigrant Detainees\* and other advocacy groups have received reports of parents forgoing calls with their children because they couldn’t afford the cost.

“It is absolutely obscene that a private vendor can charge fees that amount to a tax on children, grandmothers and families in crisis,” wrote Assemblywoman Bonnie Watson Coleman in the *Trenton Times*.

Following the FCC’s order, New Jersey initially lowered phone rates in state prisons to \$.19 per minute, and in early September 2014 dropped the rates a second time to \$.15 per minute. The most recent contract renewal extends for three months, ending in December 2014. Although the state has lowered both in-state and interstate rates to \$.15 per minute, it has not gone far enough in adopting fair and just phone charges. The state could follow New York’s example and adopt a flat rate of \$.05 per minute; New York contracts with the same prison phone service provider as New Jersey, Global Tel\*Link.

County jails are doing the minimum to comply with the FCC’s order. They’ve lowered interstate rates to \$.21 per minute for debit and prepaid calls and \$.25 per minute for collect calls, but left in place high rates and commissions for in-state

calls. It is now less expensive for county jail prisoners to call outside the state than to call one town over.

As examples of some of the phone rates at local facilities, calls from jails in seven counties cost \$5.50 for 15 minutes within the same area code (except local calls) and \$8.50 outside the area code but still within New Jersey. Seven other counties charge \$4.75 for most calls within the same area code and \$7.75 outside the area code but still within the state. Out-of-state calls, meanwhile, are capped at \$3.15 for debit and prepaid calls and \$3.75 for collect calls. This makes no sense.

Limiting calls to family members is only one aspect of this injustice. There are around 2,200 beds in New Jersey for people detained by Immigration and Customs Enforcement (ICE), and the majority are in county jails. These detainees are awaiting immigration hearings for which they have no guarantee of legal representation if they cannot afford it. Many must represent themselves in court, and phone calls are crucial for accessing the necessary documents and information for their cases – yet they

are still subjected to high phone rates.

Within the next several months, the Board of Public Utilities is expected to vote on a petition seeking to open a process to regulate phone rates in correctional facilities and lower in-state rates at both county jails and state prisons. For more information on the petition filed by a coalition of advocacy organizations, including New Jersey Advocates for Immigrant Detainees, New York University School of Law Immigrant Rights Clinic, New Jersey Institute for Social Justice, the law firm of DLA Piper and LatinoJustice, visit [www.njphonejustice.org](http://www.njphonejustice.org). ■

\* New Jersey Advocates for Immigrant Detainees is a statewide coalition which includes organizations that visit detainees in detention and provide immigrants with legal and religious services.

*Karina Wilkinson is a co-founder of the Middlesex County Coalition for Immigrant Rights and a member of New Jersey Advocates for Immigrant Detainees and New Jersey Phone Justice.*

## Pretrial Detainee’s First Amendment Retaliation Claim Survives Summary Judgment

by David M. Reutter

**I**N A DECEMBER 26, 2013 DECISION, THE Eighth Circuit Court of Appeals reversed a district court’s grant of summary judgment, holding that a former pretrial detainee had presented sufficient evidence that he was subjected to retaliation for filing grievances and a lawsuit.

Randy G. Spencer filed suit alleging a First Amendment claim related to his stay at the Jackson County Detention Center (JCDC) in Missouri. When he entered the JCDC in January 2005 he faced multiple charges, including tampering with a motor vehicle, assaulting a police officer, theft and resisting arrest.

Despite those charges and a prior criminal record, Spencer was approved for and assigned to the Inmate Worker Program (IWP), also known as the trustee

program. The IWP not only provided special privileges such as late nights, contact visits, movies, sodas, popcorn and extra food for kitchen workers, it also paid detainees for each shift worked.

Spencer was commended by the program’s supervisor, Margo Carter. He was reentered in the IWP after completing a substance abuse treatment program, and remained in the IWP until he was released from jail. In 2006, Spencer filed a lawsuit against Carter and other JCDC employees, alleging he received inadequate medical and dental care at the facility and faced retaliation by Carter.

Spencer returned to the JCDC in October 2009 on a theft charge. He was again approved for the IWP. About 10 days later, he saw Carter and apologized for filing the

lawsuit against her. After a “few seconds,” she advised him that he was being terminated from the IWP.

The next day, Spencer filed a request for administrative remedy, known as a JPO, which is required before filing a formal grievance. Carter denied his request to return to the trustee program due to his “past charges, behavior and actions.”

Spencer then filed several other JPOs and requested grievance forms from his case manager, Gale Anthony. He made repeated requests which were denied, and Anthony had him moved to another unit with “younger, aggressive inmates.” His new case manager, Brenda Williams, advised him that he “wasn’t going to get any grievance forms.” Spencer filed suit and the district court granted summary judgment to Carter, Anthony and Williams.

On appeal, the Eighth Circuit held the district court had erred, noting that “In order to demonstrate retaliation in violation of the First Amendment under 42 U.S.C. § 1983, Spencer must ‘show (1) he engaged in a protected activity, (2) the government official took adverse action against him that would chill a person of ordinary firmness from continuing in the activity, and (3) the adverse action was motivated at least in part by the exercise of the protected activity.’”

As to the claim against Carter, the appellate court wrote that she had not “explained how Spencer became disqualified from the trustee program when his

record was essentially the same as when he entered it originally in 2005.” She did not claim he had a disqualifying offense, nor did she present “evidence that Spencer’s record changed between his October 2009 approval for the trustee program and his later removal from that program.” Thus, a jury could conclude his lawsuit against her was the motivating factor for his termination from the IWP.

A jury could also conclude the actions of Anthony and Williams were motivated by retaliation for Spencer’s efforts to file grievances. The Court of Appeals therefore reversed the district court’s grant of summary judgment. Following remand the defendants filed a renewed motion for summary judgment on April 22, 2014, which remains pending. See: *Spencer v. Jackson County, Missouri*, 738 F.3d 907 (8th Cir. 2013). ■

## law offices of Susan L. Burke

Please contact me if you want to join the class actions against telephone companies who have been overcharging inmates and their families for phone calls.

Susan L. Burke

Law Offices of Susan L. Burke

1611 Park Avenue

Baltimore MD 21217

Phone 410.733.5444

Website: [www.burkepllc.com](http://www.burkepllc.com)

## Simple Business Consulting Prisoner Outreach Services

SIMPLE BROCHURE - SIMPLE PRICING

FAST PROFESSIONAL SERVICE

YOU CAN SET UP A SERVICE ACCOUNT

FLAT FEES OR RETAINER FOR TERM PROJECTS

### FINANCIAL REQUIREMENTS

NO BANK ACCOUNT

NO MINIMUM BALANCE

NO MONTHLY FEE

NO MEMBERSHIP FEE

NO APPLICATION

PUBLISHING - VIRTUAL OFFICE - GRAPHIC DESIGN - MARKETING - BUSINESS

### Make a change today!

Do you have an idea, dream, goal or plan you have been wanting to develop? What are you waiting for?

Send SASE for our brochure....

It is that

**SIMPLE!**



SIMPLE BUSINESS CONSULTING  
3308 ROUTE 940 - SUITE 104-304  
MOUNT POCONO, PA 18344  
[WWW.SIMPLEBUSINESSCONSULTING.COM](http://WWW.SIMPLEBUSINESSCONSULTING.COM)

# LEARN TO PROTECT YOUR RIGHTS

## YOU HAVE A RIGHT TO

- Adequate medical care
- Protection from assault
- Humane living conditions
- Safety from officer abuse

Learn how to defend your basic human rights with the comprehensive litigation guide, **Protecting Your Health and Safety**, 2nd edition, written specifically for prisoners who are unable to receive help from a lawyer.

Written by Robert E. Toone

Edited by Dan Manville

*A Project of the Southern Poverty Law Center\**

**COST** \$16 total  
(\$10 + \$6 shipping/handling)

FREE shipping/handling for orders from Prison Legal News over \$50

## ORDER A COPY

Send a check  
or money order to:  
**Prison Legal News**  
**PO Box 1151**  
**Lake Worth, FL 33460**  
**561-360-2523**

Be sure to include your name, identification number (if any), and mailing address. We also accept VISA and Mastercard. If using a credit card, please include the type of card (VISA or Mastercard), card number, and expiration date.

This book does not deal with legal defense against criminal charges or challenges to convictions that are on appeal. Edition last revised in 2009.

*\*Please do not send orders to the Southern Poverty Law Center.*

# Alaska Filing Fee Statute Denies Prisoners Court Access

by Mark Wilson

ON DECEMBER 6, 2013, THE ALASKA Supreme Court held that barring an indigent prisoner from filing an appeal due to inability to pay the filing fee deprived him of his fundamental right of access to the courts.

In May 2011, Alaska prisoner James Barber was found in violation of prison rules and placed in segregation. He appealed the violation to the superior court, requesting a partial filing fee exemption under AS 09.19.010 due to his indigency. The superior court granted a partial exemption and reduced the filing fee to \$33.86, to be paid within 30 days.

AS 09.19.010 specifies that prisoners “must pay a full court filing fee before commencing litigation against the State. But the statute allows a court to exempt part of the filing fee if the prisoner demonstrates exceptional circumstances.”

In September 2011, Barber was found guilty of a second disciplinary violation and again put in segregation. He also attempted to challenge that order in superior court, seeking a partial filing fee exemption due to his inability to pay. The superior court again set the filing fee at \$33.86, due within 30 days.

When Barber failed to pay, the superior court dismissed both actions. He then appealed to the Alaska Supreme Court, arguing that the prisoner litigation filing fee statute deprived him of access to the courts. The Supreme Court asked the Alaska Association of Criminal Defense Lawyers to appear as *amicus curiae* in support of Barber’s position.

The Court observed that it had “recited the proposition that ‘an inmate’s right of unfettered access to the courts is as fundamental a right as any other he may hold. All other rights ... are illusory without it,’” citing *Mathis v. Sauser*, 942 P.2d 1117 (Alaska 1997) (quoting *Adams v. Carlson*, 488 F.2d 619 (7th Cir. 1973)).

Analyzing Barber’s court access claim as an issue of procedural due process, the Supreme Court applied the balancing test of *Matthews v. Eldridge*, 424 U.S. 319 (1976) and concluded, following an extensive analysis, that “as applied to prisoners in Barber’s circumstances, AS 09.19.010 denies adequate procedural due process.”

“Although the state may have a legitimate interest in reducing frivolous prisoner litigation,” the Court wrote, “due process cannot allow that interest to be furthered by barring an individual prisoner’s court access

because of an actual inability to pay.” The dismissals of Barber’s appeals were reversed and the case remanded for further proceedings. See: *Barber v. Alaska DOC*, 314 P.3d 58 (Alaska 2013). ■

## California: Federal Judge Certifies Class-Action Over SHU Placement, Conditions

by Derek Gilna

CALIFORNIA STATE PRISON OFFICIALS could be forgiven for complaining that the federal courts spend a lot of time monitoring their activities, but the facts indicate that such attention is warranted. California’s prison system, already singled out by the U.S. Supreme Court for overcrowding and court-ordered population reductions, is currently under additional scrutiny for constitutional violations in the Security Housing Unit (SHU) at Pelican Bay State Prison.

A lawsuit filed by the Center for Constitutional Rights on behalf of ten prisoners who have spent at least ten years in the SHU at Pelican Bay alleges that prolonged SHU confinement constitutes cruel and inhumane punishment.

According to Alexis Agathocleous, one of the attorneys representing the plaintiffs, “Since their 2011 hunger strikes, hundreds of prisoners at the Pelican Bay SHU – and across California – have stood together in solidarity to protest inhumane conditions and broken policies they’ve been subjected to for decades. This case has always been about the constitutional violations suffered by all prisoners at the SHU...”

The federal judge hearing the case of *Ashker v. Brown* apparently agreed, and on June 2, 2014 certified the lawsuit as a class-action for all similarly situated prisoners held in Pelican Bay’s SHU.

The prisoners’ tactic of engaging in hunger strikes, uncommon in U.S. prisons, has focused attention on what prisoners’ rights advocates argue have been long-term problems in California’s prison system. [See: *PLN*, Aug. 2013, p.18; July 2012, p.32].

Following an expansive investigation, Amnesty International (AI) issued

a 63-page report in September 2012, concluding that SHU conditions “breach international standards on humane treatment.” The SHU at Pelican Bay is intentionally designed to “minimize human contact and reduce visual stimulation,” the report stated.

The district court noted that “Plaintiffs allege that SHU inmates live in almost total isolation. They spend at least twenty-two and a half hours per day in windowless, concrete cells with perforated steel doors and typically leave only to shower or exercise alone in an enclosed pen.”

According to the AI report, “Under California regulations, SHU is intended for prisoners whose conduct endangers the safety of others or the security of the institution.” Yet two-thirds of SHU prisoners are serving “indeterminate” terms in segregation – not due to violent behavior but because they have been “validated” by prison authorities as gang members or associates. [See: *PLN*, May 2014, p.30; Dec. 2013, p.40].

The arbitrariness of such isolation practices has led to an average stay in Pelican Bay’s SHU of 6.8 years, AI stated. At least 500 prisoners have spent more than 10 years in solitary confinement, where the conditions “would crush you” according to Tess Murphy, an Amnesty observer who toured Pelican Bay. Disturbingly, nearly 60 prisoners have been held in the SHU for over 20 years, many of them since the facility first opened in 1989.

Now these practices will be subjected to judicial scrutiny in the latest of a long line of federal lawsuits that have mined a seemingly endless vein of questionable conditions of confinement that have exacted an immense cost in unnecessary human suf-



fering in California's prison system.

Although there have been recent efforts by state prison officials to review SHU placements and move certain SHU prisoners into a "step down" program, such efforts have been criticized as inadequate. As of June 9, 2014, prison officials had conducted 828 SHU reviews, resulting in 557 prisoners being moved to general population and 231 placed in various levels of the step down program. Five of the original plaintiffs in *Ashker* have been removed from SHU confinement.

In its class certification order, the district court certified two classes, one consisting of "all inmates who are assigned to an indeterminate term at the Pelican Bay SHU on the basis of gang validation..." and the other of "all inmates who are now, or will be in the future, assigned to the Pelican Bay SHU for a period of more than ten continuous years." Prisoners held in SHUs at other facilities are not included.

The court also assigned five of the original named plaintiffs who remain at Pelican Bay to serve as class representatives, and denied a motion by the California

Correctional Peace Officers Association (CCPOA) to intervene in the case. See: *Ashker v. Brown*, U.S.D.C. (N.D. Cal.), Case No. 4:09-cv-05796-CW; 2014 U.S. Dist. LEXIS 75347 (N.D. Cal. June 2, 2014).

In a related matter, a bill that would have required certain reforms in SHUs in California prisons, SB892, died in the state legislature in late August 2014. For example, the bill would have allowed SHU prisoners to have photographs and make phone calls if they maintained good behavior for three months. Fears that Governor Jerry Brown would veto the legislation contributed to its demise.

"I became convinced that to get a bill signed into law would require further weakening it to a point where it could no longer accomplish its goals," said state Senator Loni Hancock.

Thus, it appears that changes in SHU practices will have to be accomplished through the courts, as California lawmakers lack the political will to do so. ■

Additional sources: [www.townhall.com](http://www.townhall.com), [www.truth-out.org](http://www.truth-out.org)

## WINNING HABEAS CORPUS & POST CONVICTION RELIEF Revised 4th Ed. 2012

Main subject: Ineffective Assistance of Counsel-"IAC"

Atty Kent Russel writes: "Simply the best source for a quick study on major subjects in the criminal process."

◇ A virtual law library in a book, major constructional issues

◇ 6th Amendment & IAC, Duty to investigate

◇ Forensics, Plea IAC, Jury Instructions

◇ §2254 & 2255 Procedure, Clearly established law

## POST COVICTION RELIEF FOR WASH. STATE-Personal Restraint Petition

The only book for Wash. State prisoners who seek collateral review by PRP or CrR 7.8 motion. Covers all aspects of preparing a PRP, time bar, facial invalidity, Plea bargain, sentencing, incl. case law & rules.

ORDER: (price incl. tax, plus S&H)

[ ] Winning Habeas Corpus...	\$ 59.50
[ ] Post Conviction Relief for Wash.	\$ 49.50
[ ] Both Books	\$ 95.00

To: FAST LAW PUBLISHING

Box 577, Upland CA 91785 On-line [www.fastlaw.org](http://www.fastlaw.org)

## THE SENZA COLLECTION

SENZA SPECIALIZES IN PROVIDING YOU SEVERAL CHOICES  
ALL NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY  
- OR -

NON NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY  
WE HAVE DIVIDED OUR CATALOGS INTO THESE CATEGORIES:

CAUCASIAN/AFRICAN-AMERICAN/HISPANIC/ASIAN/MIXED HOTTIES

EACH PAGE OF OUR CATALOGS HAS 99 GLORIOUSLY SEDUCTIVE LADIES POSING JUST FOR YOUR ENJOYMENT.

OVER 250 CATALOGS TO COLLECT AT JUST \$2.50 PER CATALOG

HERE'S A LITTLE FREEBIE FROM SENZA TO YOU!!!

ORDER YOUR FREE SENZA "99 HOTTIES" SAMPLE CATALOG

JUST SEND US TWO U.S. FOREVER OR FIRST CLASS STAMPS AND A SELF ADDRESSED STAMPED ENVELOPE TO:

SENZA FREE CATALOG OFFER P.O. BOX 5840 BALTIMORE, MD 21282

AND FOR THOSE THAT JUST CANNOT WAIT...TAKE ADVANTAGE OF THIS LIMITED TIME OFFER

SENZA'S INTRODUCTORY SPECIAL \*\*\*\*\*DIRTY DOZEN\*\*\*\*\*

\$19.99 GETS YOU ALL THIS + FREE SHIPPING AND HANDLING

12 EYE POPPING CATALOGS! EACH CATALOG HAS 99 PICS TO CHOOSE FROM ON EACH PAGE  
PLUS

12 4X6 RANDOM PRINTS FROM OUR MIXED HOTTIES SELECTION TO SHOW OFF SENZA'S 4X6'S PRINT QUALITY.  
ALL FOR JUST \$19.99

REMEMBER YOU MUST: SPECIFY NUDE OR NON-NUDE ON YOUR ORDER

SPECIFY YOUR INSTITUTIONS RESTRICTIONS AS TO THE NUMBER OF PRINTS ALLOWED IN ONE ENVELOPE.

SENZA CORPORATE POLICIES - PLEASE REVIEW THEM CAREFULLY

ALL SENZA COLLECTION IMAGES ARE SOLD AT A FLAT PRICE OF 0.35 CENTS EACH.

ANYONE WISHING TO PURCHASE 1000+ PRINTS AT ONE TIME WILL BE GIVEN A FLAT PRICE OF 0.30 CENTS PER IMAGE.

SENZA HAS A MINIMUM ORDER REQUIREMENT OF: \$15.00 THIS DOESN'T INCLUDE S&H CHARGES.

SHIPPING AND HANDLING CHARGES ARE AS FOLLOWS:

1 - 5 4x6 PRINTS - \$1.00 PER ENVELOPE / 6 - 15 4x6 PRINTS - \$1.50 PER ENVELOPE

16 - 25 4x6 PRINTS - \$2.00 PER ENVELOPE

YOU MUST NOTIFY SENZA ON THE ORDER FORM,

THE MAXIMUM NUMBER OF PRINTS YOUR INSTITUTION WILL PERMIT IN EACH ENVELOPE

SENZA WILL ACCEPT BRAND NEW U.S. FIRST CLASS POSTAGE STAMPS AT THE RATE OF \$5.00

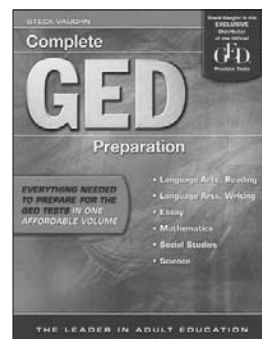
FOR EACH BRAND NEW FLAT BOOK OF 20 STAMPS.

YOU ARE REQUIRED TO KNOW YOUR INSTITUTIONS POLICIES REGARDING WHAT IMAGES ARE ACCEPTABLE INTO YOUR FACILITY INSTITUTION.

THERE ARE NO EXCEPTIONS TO THIS POLICY. RETURNED/REJECTED MAIL - YOU WILL HAVE 15 BUSINESS DAYS TO SEND US A SASE  
(3 STAMPS PER 25 REJECTED PHOTOS) WITH A STREET ADDRESS IN WHICH TO MAIL YOUR RETURNED/REJECTED PRINTS.

AFTER 15 DAYS THE PRINTS ARE RETURNED TO OUR INVENTORY.

ALL SALES ARE FINAL/NO REFUNDS OR EXCHANGES



## Complete GED Preparation [Paperback]

Publisher: Steck-Vaughn; 2nd edition  
928 pages; \$24.99; Item #: 1099

Over 2,000 GED-style questions thoroughly prepare learners for test day. This single book offers thorough coverage of the revised GED Test with new test information, instruction, practice, and practice tests. Answer key included.

Order from: **Prison Legal News**

(Add \$6 shipping for orders under \$50)

PO Box 1151

Lake Worth, FL 33460

Phone: (561) 360-2523

[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

# \$8.15 Million Jury Award for Prisoner's Death at New York Jail

by David Reutter

**A** NEW YORK CITY JURY AWARDED \$8.15 million to the estate of a prisoner who died after being denied access to medical care.

While incarcerated in 1996 at the Vernon C. Bain Correctional Center, part of the Rikers Island complex, Jose Santiago, 25, told a guard he was experiencing symptoms that included a rapid heartbeat, profuse perspiration and difficulty breathing. The guard dismissed Santiago's request for treatment at the facility's clinic.

Just 30 minutes later, moments before he collapsed, Santiago again approached the same guard who again refused to help him. Santiago's pulse could not be detected when medical staff arrived, so they started CPR and summoned emergency medical technicians. The emergency responders did not arrive until 30 minutes later, and pronounced Santiago dead after their life-saving efforts failed.

Following his October 24, 1996 death, Santiago's estate, represented by a public administrator, sued the City of New York and the city's Department of Correction.

The estate's emergency medical expert, Rachael L. Waldron, opined that Santiago's symptoms were caused by atrial fibrillation. She said his symptoms indicated he was receiving insufficient oxygen and his heart could have been stabilized with simple defibrillation, which was available in the jail's clinic but not utilized.

Waldron also opined that medical staff failed to properly administer CPR and delayed treatment by not directing the emergency technicians to Santiago's location. She concluded that Santiago's death was due to lack of proper medical care.

During the litigation, the trial court sanctioned the defendants for failing to exchange information in discovery.

Santiago's death left his 4-year-old son and 2-year-old daughter without a father. The case went to trial in June 2013, and after ten days the jury unanimously found that employees at the jail were negligent.

The jurors awarded \$150,000 for past loss of household services and \$200,000 for economic losses; \$4 million was awarded

to Santiago's daughter and \$3.8 million to his son for loss of parental guidance. The estate was represented by attorney Michael

J. Kuharski. See: *Rodriguez v. City of New York*, Bronx Supreme Court (NY), Case No. 24068/98. ■

## Tenth Circuit Holds "Consensual" Sex Defeats Prisoner's Eighth Amendment Claim

by Mark Wilson

**T**HE TENTH CIRCUIT COURT OF APPEALS has held that a female prisoner's "consensual" sex with two guards did not violate the Eighth Amendment.

Stacey Graham was housed in solitary confinement at a jail in Logan County, Oklahoma. Between July and October 2009, jail guard Rahmel Jefferies began talking to Graham over the intercom and their discussions soon became sexual. They also exchanged sexually explicit notes. "I look forward to fucking you," Graham wrote in one note. "Damn, just the thought of that gets my nipples hard. I'm such a nympho!" She also flashed her breasts at Jefferies "for the hell of it."

On October 7, 2009, another jailer, Alexander Mendez, called Graham over the intercom, "asked about her sexual fantasies" and told her about his. "She responded that her fantasy was to 'be with two men at the same time.'... He asked who she would like him to bring. She said, 'Bring Jefferies.'" Graham then agreed to allow Mendez to see her naked when he came by her cell.

During the early morning hours of October 9, 2009, Jefferies and Mendez entered Graham's cell. She "was wearing just her T-shirt. Mendez took it off and Ms. Graham kissed Jefferies.... it was then 'back and forth' between the two men, and both had their hands on her. Jefferies began to have intercourse with Ms. Graham while she simultaneously performed oral sex on Mendez. The two men then switched positions...."

Another prisoner later alerted the assistant jail administrator that something was going on between Graham and the guards. Graham eventually admitted to having consensual sex with Mendez and Jefferies, but said she "didn't really want Mendez there."

Both guards were immediately termi-

nated after they admitted to the sex acts. Graham was transferred to a different facility, where she told a psychologist that two guards had raped her. She "had a history of bipolar disorder and sexual abuse," but neither Jefferies nor Mendez was aware of her mental health issues.

Graham filed suit in federal court, alleging that the sexual encounter with Mendez and Jefferies violated her rights under the Eighth Amendment. The district court granted summary judgment to the defendants, "holding that 'in light of the consensual sexual activity at issue in this case,' there was no Eighth Amendment violation."

The Tenth Circuit affirmed on December 20, 2013, noting that Graham, unsurprisingly, focused "not on whether she consented as a factual matter but on whether a prisoner can legally consent to sex with one of her custodians." The Court of Appeals declined to hold that consensual sex in this context violates the Eighth Amendment.

The Court observed that "it is a matter of first impression in this circuit whether consent can be a defense to an Eighth Amendment claim based on sexual acts." It then noted that other courts had split on the issue, and the Ninth Circuit had recently "adopted a middle ground in *Wood v. Beauclair*, 692 F.3d 1041 (9th Cir. 2012)," creating "a rebuttable presumption of nonconsent." [See: *PLN*, March 2014, p.54].

"Even were we to adopt the same presumption as the Ninth Circuit," the appellate court wrote, in Graham's case "the presumption against consent would be overcome by the overwhelming evidence of consent." See: *Graham v. Sheriff of Logan County*, 741 F.3d 1118 (10th Cir. 2013). ■



Stay in touch with a good Magazine!  
Get 5 Full One Year Subscriptions

**ONLY \$20!**  
+ \$5.99 p/h

Check your 5 magazines and underline three backup choices (in case of unavailability)

**"BEST DEAL ON THE POUND!"**

- ☐ ALLURE (12)
- ☐ AMERICAN PHOTO (6)
- ☐ ARTHRITIS SELF MANAGEMENT (6)
- ☐ ARTHRITIS TODAY (6)
- ☐ AUTOMOBILE (12)
- ☐ BACKPACKER (9)
- ☐ BETTER HOMES & GARDENS (12)
- ☐ BLACK ENTERPRISE (12)
- ☐ BOATING (10)
- ☐ BOATING WORLD (9)
- ☐ BON APPETIT (12)
- ☐ BOWHUNT AMERICA (6)
- ☐ BOWHUNTING WORLD (9)
- ☐ CAR & DRIVER (12)
- ☐ CHARISMA (12)
- ☐ CONDE NAST TRAVELER (12)
- ☐ COSMOPOLITAN (12)
- ☐ COUNTRY LIVING (10)
- ☐ CRUISING WORLD (12)
- ☐ CYCLE WORLD (12)
- ☐ DETAILS - FASHION (10)
- ☐ DIABETES SELF MANAGEMENT (6)
- ☐ DIGITAL PHOTO (7)
- ☐ DIRT RIDER (12)
- ☐ EATING WELL (6)
- ☐ EBONY (12)
- ☐ ELLE (12)

- ☐ ELLE DECOR (10)
- ☐ ENTREPRENEUR (12)
- ☐ ESQUIRE (10)
- ☐ EVERY DAY WITH RACHAEL RAY (10)
- ☐ FAMILY CIRCLE (12)
- ☐ FAMILY FUN (10)
- ☐ FAST COMPANY (10)
- ☐ FIELD & STREAM (12)
- ☐ FITNESS (10)
- ☐ FLORIDA SPORT FISHING (6)
- ☐ FLYING (12)
- ☐ FREESKIER (6)
- ☐ GLAMOUR (12)
- ☐ GOLF DIGEST (12)
- ☐ GOLF TIPS (5)
- ☐ GOLF WEEK (38)
- ☐ GOOD HOUSEKEEPING (12)
- ☐ HARPERS BAZAAR (10)
- ☐ HOT BIKE (12)
- ☐ INC (12)
- ☐ INSTRUCTOR K - 8 (6)
- ☐ ISLANDS MAGAZINE (8)
- ☐ LATINA (10)
- ☐ LIFE EXTENSION (13)
- ☐ LOG HOME LIVING (9)
- ☐ LOW COST COOKING (1)
- ☐ LUCKY (10)

- ☐ MARIE CLAIRE (12)
- ☐ MARLIN (8)
- ☐ MEN'S FITNESS (10)
- ☐ MEN'S JOURNAL (12)
- ☐ MEXICAN FIESTA (1)
- ☐ MIDWEST LIVING (6)
- ☐ MINISTRY TODAY (6)
- ☐ MORE (10)
- ☐ MOTOR TREND (12)
- ☐ MOTORCYCLIST (12)
- ☐ NATURAL HEALTH (6)
- ☐ NYLON MAGAZINE (10)
- ☐ NYLON GUYS (6)
- ☐ OK! MAGAZINE (52)
- ☐ OLD HOUSE JOURNAL (8)
- ☐ OUTDOOR LIFE (12)
- ☐ OUTDOOR PHOTOGRAPHER (11)
- ☐ OUTSIDE (12)
- ☐ PARENTS (12)
- ☐ PLANE & PILOT (12)
- ☐ POPULAR PHOTOGRAPHY (12)
- ☐ POPULAR SCIENCE (12)
- ☐ PREDATOR EXTREME (6)
- ☐ RED BULLETIN MAGAZINE (12)
- ☐ REDBOOK (11)
- ☐ ROAD & TRACK (10)
- ☐ ROLLING STONE (26)

- ☐ SALT WATER SPORTSMAN (10)
- ☐ PARENT & CHILD (8)
- ☐ SELF (12)
- ☐ SEVENTEEN (10)
- ☐ SHAPE (12)
- ☐ SIEMPRE MUJER (6)
- ☐ SKI MAGAZINE (6)
- ☐ SNOWBOARD (4)
- ☐ SPORT RIDER (10)
- ☐ TEEN VOGUE (10)
- ☐ TENNIS (6)
- ☐ THE ATLANTIC MONTHLY (10)
- ☐ TIMBER HOME LIVING (6)
- ☐ TOWN & COUNTRY (10)
- ☐ TRANSWORLD MOTOCROSS (12)
- ☐ UPTOWN (6)
- ☐ US WEEKLY (52)
- ☐ VERANDA (6)
- ☐ W MAGAZINE (10)
- ☐ WEIGHT WATCHERS (6)
- ☐ WHITETAIL JOURNAL (6)
- ☐ WIRED (12)
- ☐ WOMAN'S DAY (12)
- ☐ WOOD (7)
- ☐ WORKING MOTHER (6)
- ☐ YACHTING (12)
- ☐ YOGA JOURNAL (9)

OK TO COPY

\* No Renewal

"Tell your Friends and Families!"

\*\*\*\*DUE TO PUBLISHER PROCESSING TIMES, WE WILL NOT UNDER ANY CIRCUMSTANCES CHECK WITH ANY PUBLISHER ABOUT THE STATUS OF ANY MAGAZINE SUBSCRIPTION UNTIL AFTER 90 DAYS HAVE PASSED FROM THE DATE OF PROCESSING YOUR ORDER! NO EXCEPTIONS!\*\*\*\*



**Inmate Magazine Service**

P.O. Box 2063, Fort Walton Beach, FL 32549  
www.InmateMagazineService.com

Name and Inmate # (please print, maximum 24 characters):											
Address:											
City:						State:			Zip:		

Allow 6-8 weeks for delivery. Pay by Check, Money Order or **Order Online** and use Credit Card or PayPal. Keep Address Short!



Stay in touch with a good Magazine!  
Get 5 Full One Year Subscriptions

**ONLY \$20!**  
+ \$5.99 p/h

Check your 5 magazines and underline three backup choices (in case of unavailability)

**"BEST DEAL ON THE POUND!"**

- ☐ ALLURE (12)
- ☐ AMERICAN PHOTO (6)
- ☐ ARTHRITIS SELF MANAGEMENT (6)
- ☐ ARTHRITIS TODAY (6)
- ☐ AUTOMOBILE (12)
- ☐ BACKPACKER (9)
- ☐ BETTER HOMES & GARDENS (12)
- ☐ BLACK ENTERPRISE (12)
- ☐ BOATING (10)
- ☐ BOATING WORLD (9)
- ☐ BON APPETIT (12)
- ☐ BOWHUNT AMERICA (6)
- ☐ BOWHUNTING WORLD (9)
- ☐ CAR & DRIVER (12)
- ☐ CHARISMA (12)
- ☐ CONDE NAST TRAVELER (12)
- ☐ COSMOPOLITAN (12)
- ☐ COUNTRY LIVING (10)
- ☐ CRUISING WORLD (12)
- ☐ CYCLE WORLD (12)
- ☐ DETAILS - FASHION (10)
- ☐ DIABETES SELF MANAGEMENT (6)
- ☐ DIGITAL PHOTO (7)
- ☐ DIRT RIDER (12)
- ☐ EATING WELL (6)
- ☐ EBONY (12)
- ☐ ELLE (12)

- ☐ ELLE DECOR (10)
- ☐ ENTREPRENEUR (12)
- ☐ ESQUIRE (10)
- ☐ EVERY DAY WITH RACHAEL RAY (10)
- ☐ FAMILY CIRCLE (12)
- ☐ FAMILY FUN (10)
- ☐ FAST COMPANY (10)
- ☐ FIELD & STREAM (12)
- ☐ FITNESS (10)
- ☐ FLORIDA SPORT FISHING (6)
- ☐ FLYING (12)
- ☐ FREESKIER (6)
- ☐ GLAMOUR (12)
- ☐ GOLF DIGEST (12)
- ☐ GOLF TIPS (5)
- ☐ GOLF WEEK (38)
- ☐ GOOD HOUSEKEEPING (12)
- ☐ HARPERS BAZAAR (10)
- ☐ HOT BIKE (12)
- ☐ INC (12)
- ☐ INSTRUCTOR K - 8 (6)
- ☐ ISLANDS MAGAZINE (8)
- ☐ LATINA (10)
- ☐ LIFE EXTENSION (13)
- ☐ LOG HOME LIVING (9)
- ☐ LOW COST COOKING (1)
- ☐ LUCKY (10)

- ☐ MARIE CLAIRE (12)
- ☐ MARLIN (8)
- ☐ MEN'S FITNESS (10)
- ☐ MEN'S JOURNAL (12)
- ☐ MEXICAN FIESTA (1)
- ☐ MIDWEST LIVING (6)
- ☐ MINISTRY TODAY (6)
- ☐ MORE (10)
- ☐ MOTOR TREND (12)
- ☐ MOTORCYCLIST (12)
- ☐ NATURAL HEALTH (6)
- ☐ NYLON MAGAZINE (10)
- ☐ NYLON GUYS (6)
- ☐ OK! MAGAZINE (52)
- ☐ OLD HOUSE JOURNAL (8)
- ☐ OUTDOOR LIFE (12)
- ☐ OUTDOOR PHOTOGRAPHER (11)
- ☐ OUTSIDE (12)
- ☐ PARENTS (12)
- ☐ PLANE & PILOT (12)
- ☐ POPULAR PHOTOGRAPHY (12)
- ☐ POPULAR SCIENCE (12)
- ☐ PREDATOR EXTREME (6)
- ☐ RED BULLETIN MAGAZINE (12)
- ☐ REDBOOK (11)
- ☐ ROAD & TRACK (10)
- ☐ ROLLING STONE (26)

- ☐ SALT WATER SPORTSMAN (10)
- ☐ PARENT & CHILD (8)
- ☐ SELF (12)
- ☐ SEVENTEEN (10)
- ☐ SHAPE (12)
- ☐ SIEMPRE MUJER (6)
- ☐ SKI MAGAZINE (6)
- ☐ SNOWBOARD (4)
- ☐ SPORT RIDER (10)
- ☐ TEEN VOGUE (10)
- ☐ TENNIS (6)
- ☐ THE ATLANTIC MONTHLY (10)
- ☐ TIMBER HOME LIVING (6)
- ☐ TOWN & COUNTRY (10)
- ☐ TRANSWORLD MOTOCROSS (12)
- ☐ UPTOWN (6)
- ☐ US WEEKLY (52)
- ☐ VERANDA (6)
- ☐ W MAGAZINE (10)
- ☐ WEIGHT WATCHERS (6)
- ☐ WHITETAIL JOURNAL (6)
- ☐ WIRED (12)
- ☐ WOMAN'S DAY (12)
- ☐ WOOD (7)
- ☐ WORKING MOTHER (6)
- ☐ YACHTING (12)
- ☐ YOGA JOURNAL (9)

OK TO COPY

\* No Renewal

"Tell your Friends and Families!"

\*\*\*\*DUE TO PUBLISHER PROCESSING TIMES, WE WILL NOT UNDER ANY CIRCUMSTANCES CHECK WITH ANY PUBLISHER ABOUT THE STATUS OF ANY MAGAZINE SUBSCRIPTION UNTIL AFTER 90 DAYS HAVE PASSED FROM THE DATE OF PROCESSING YOUR ORDER! NO EXCEPTIONS!\*\*\*\*



**Inmate Magazine Service**

P.O. Box 2063, Fort Walton Beach, FL 32549  
www.InmateMagazineService.com

Name and Inmate # (please print, maximum 24 characters):											
Address:											
City:						State:			Zip:		

Allow 6-8 weeks for delivery. Pay by Check, Money Order or **Order Online** and use Credit Card or PayPal. Keep Address Short!

# Colorado Law Grants Immunity to Law Enforcement Officers Transporting Juveniles

by David M. Reutter

**T**HE COLORADO SUPREME COURT HELD on January 13, 2014 that “allegations of negligence alone are not sufficient to overcome the statutory grant of immunity and the presumption of good faith afforded to law enforcement officers” under section 19-2-508(7), C.R.S. (2013) – a statute that pertains to officers who transport juveniles.

The Court’s ruling vacated a trial court’s order denying a motion to dismiss on immunity grounds in a lawsuit filed against the Jefferson County Sheriff and Deputy John Hodges. While transporting juveniles Daniel Larson and Dylan Bucy on July 28, 2010 from a court hearing to the Mount View Youth Services Center, a collision occurred between the transport van and a car that failed to yield when Deputy Hodges pulled into an intersection.

Larson and Bucy were injured. They filed suit, alleging that Hodges had acted negligently by failing to secure their seatbelts while they were handcuffed and by driving into the intersection without ensuring it was clear. After the trial court denied the defendants’ motion to dismiss, the Colorado Supreme Court granted review.

Under section 19-2-508(7), it “shall be presumed” that law enforcement officers “acting under the direction of the court who in good faith transport[] any juvenile” are entitled to immunity for civil or criminal liability.

The trial court found that immunity under the statute did not apply because

there was sufficient evidence to “infer that Hodges failed to act in faithfulness to his duty or obligation to secure the [juveniles] and accordingly did not transport the [juveniles] in good faith.”

The Supreme Court held that if negligence alone were sufficient to rebut the presumption of good faith, “the immunity afforded by section 19-2-508(7) would be gutted because law enforcement officers would have to demonstrate a complete lack of negligence – meaning they would not be

liable in the first place – in order to receive immunity.”

The Court therefore concluded “that allegations of negligence alone are not sufficient to overcome the immunity and the presumption of good faith provided by section 19-2-508(7). To hold otherwise would impermissibly defile the legislature’s attempt to immunize qualifying law enforcement officers from liability.” See: *Young v. Jefferson County*, 2014 CO 1, 318 P.3d 458 (Colo. 2014). ■

## Jail Video Visitation Proposal Considered in Dallas County, Texas

**O**N SEPTEMBER 9, 2014, THE DALLAS County Commissioners Court unanimously rejected a proposal that would have ended all face-to-face visits with prisoners at the Dallas County Jail. The Commissioners Court had been considering bids to equip the jail with a video visitation system. Prison phone service provider Securus Technologies appeared to have the edge on the contract; however, when the company submitted a plan that included the elimination of in-person visits at the jail, it met vigorous opposition from County Judge Clay Jenkins.

Judge Jenkins’ outspoken rejection of the plan was a rallying cry for a number of prisoners’ rights advocates, including Texas CURE, former state Rep. Terri Hodge and Richard Miles, a former Texas prisoner who

was exonerated following a wrongful murder conviction. The Commissioners Court also received hundreds of emails and a petition with over 2,000 signatures objecting to Securus’ video visitation plan.

The company’s proposal included charging \$10 for each 20-minute visit, and tried to sweeten the deal by offering the county a 25% commission on video visitation revenue. The Commissioners Court initially decided to table the issue and allow previous bidders to submit new bids based on revised criteria. Any new bids would be required to 1) retain in-person visits with prisoners, 2) eliminate commissions on video visitation and 3) clarify various details including the number of video visitation terminals that would be installed.

“It is a way to make money ... off the

## AFFORDABLE INMATE CALLING SERVICES

*Keeping you Connected while saving you Money!*

**NO hidden fees. One flat monthly rate • NO setup fee with referral information  
NO charges to add/ remove numbers • NO transfer fees • 100% BOP Compliant!**

**2 vanity numbers for \$15 + tax /month, additional # for \$1.50 each**

**Ask us about our REFERRAL PROGRAM!**

**Contact Us:**

**Inmates: inmates@aicsllc.net • 303-214-0097**

**Families: www.aicsllc.net • billing@aicsllc.net • 866-645-9593**





backs of families,” said Judge Jenkins. “I am very pleased with the court today in looking at these commissions and saying that they want to get out of the commission business.”

However, in late September, due to legal concerns, the Commissioners Court renewed contract negotiations with Securus to provide video visitation at the Dallas County Jail. The county will require the continuation of in-person visits and will not

accept commissions from video visitation revenue. The contract with Securus may also extend to phone services at the jail, which currently include commission payments. In 2013, Dallas County reportedly received \$2.8 million in phone commissions – a practice that has also drawn criticism.

“It is very important that we do not profit on the backs of inmates in the jail,” stated Commissioner Elba Garcia.

For years, *PLN* has reported on the

nationwide epidemic of price gouging by prison and jail phone companies like Securus and Global Tel\*Link. [See, e.g.: *PLN*, Dec. 2013, p.1; April 2011, p.1]. Those companies, and a growing number of other firms, are increasingly extending their commission-based business model to video visitation. [See: *PLN*, March 2014, p.50].

Sources: [www.prisonpolicy.org](http://www.prisonpolicy.org), [www.dallasnews.com](http://www.dallasnews.com), [www.statesman.com](http://www.statesman.com)

## California Exhaustion Requirement Extends to Independent Contractors

by Mark Wilson

ON DECEMBER 6, 2013, THE CALIFORNIA Court of Appeal, Third Appellate District, held that prisoners must exhaust administrative remedies before suing independent contractors employed by the prison system.

California prisoner Ira Don Parthemore was examined by Dr. Peter R. Col, an optometrist under contract at the Mule Creek State Prison.

Col diagnosed Parthemore with cataracts in both eyes and advised him that he would need surgery. Col later re-examined him and concluded surgery was not necessary. Col prepared a transfer request, incorrectly identifying Parthemore as being “legally blind.” He was then transferred to a medical facility.

A different optometrist examined Parthemore and found that he “never should have been diagnosed as legally blind or transferred to the medical facility.”

Parthemore fell while at the medical facility, breaking his right kneecap and several bones in his left shoulder. After he recovered, he was sent back to Mule Creek.

Parthemore sued Dr. Col in state court for negligence, alleging that the injuries from his fall were caused by Col’s refusal to issue a new eyeglasses prescription. He also alleged that Col intentionally falsified official medical records, resulting in his unnecessary transfer to the medical facility.

Col moved to dismiss, arguing that Parthemore had not exhausted his administrative remedies concerning the claims alleged in his complaint; Parthemore, in turn, argued that exhaustion was not required under the Government Claims Act, Gov. Code § 810 *et seq.*, because Col was an independent contractor and not a government employee. The trial court agreed with Col and dismissed the lawsuit.

The Court of Appeal affirmed, find-

ing that Parthemore did not exhaust administrative remedies. It then observed that California prisoners must exhaust “any policy, decision, action, condition, or omission by the department or its staff.” The word “staff” was intended to be defined “as broadly as possible,” the appellate court concluded. As such, it includes “independent contractors, like defendant, who are retained by the department to provide services on its behalf.”

The Court of Appeal concluded that “plaintiff’s obligation to exhaust the administrative remedies available to prisoners concerning the medical treatment they receive is independent of the obligation to comply with the Government Claims Act.”

Parthemore sought review by the California Supreme Court, which was denied on March 12, 2014. See: *Parthemore v. Col*, 221 Cal. App. 4th 1372 (Cal. App. 3d Dist. 2013), *review denied*.

### CALIFORNIA LIFER NEWSLETTER

**Published by Life Support Alliance**

CLN: Comprehensive newsletter mailed every 8 weeks containing state and federal cases, parole board news, statistics, legislation and articles of interest to Lifers and their supporters.

#### CLN SUBSCRIPTIONS

Prisoners .... \$30 per year (or 100 stamps)  
Others .... \$90 per year

**Make checks payable to LSAEF**

(Life Support Alliance Education Fund)

**CLN, P.O. Box 277, Rancho Cordova, CA. 95741**

*CLN no longer provides copy service of legal cases, articles or news and materials from the Internet.*

[www.lifesupportalliance.org](http://www.lifesupportalliance.org) (916) 402-3750

#### Photo Tryst

PO Box 103

Chapmansboro TN 37035

#### Quality Pics of Quality

Babes

All catalogs 450 full color pics

Summer 2013 free with SASE

All other catalogs \$4 or 10 forever stamps, and ship with a coupon for 5 free pics with your minimum order of 10

Winter 2014  
Nudity)

Spring 2014  
All Nude #1 (you see it all)

Topless #1 (contains frontal  
Nudity)

Our next general (season) catalog free with each order

You can deposit funds with us and order your pics “on account”

We accept institutional checks, personal checks from friends and family, and money orders

Stamp orders are only with stamp coupons obtained with regular orders

Oregon and Utah consistently deny our catalogs so we cannot do business there. Sorry

# Former Wyoming Probation Officer Receives, Violates Probation

by Derek Gilna

**A** FORMER WYOMING DEPARTMENT of Corrections probation officer was placed on probation herself following her conviction on drug and theft charges.

Ruby Maddox, 36, was enrolled in a rehabilitation center to address her addiction to prescription medication as part of a plea agreement after she admitted to stealing drugs from probationers she was responsible for supervising. She was also charged with stealing a puppy from a probationer and taking money from a charity event.

Maddox received probation plus a suspended prison sentence of three-to-five years in April 2013 after pleading guilty to one felony count of possession of a controlled substance and four counts of petty larceny.

During her initial three-year term of supervised probation, Maddox was ordered to complete a program at the Casper Re-Entry Center. Maddox has Graves' disease, an autoimmune disorder; she was admitted in mid-2013 to Wyoming Recovery for addiction to painkillers.

"A person can get in trouble with it before you know it," her attorney, Tom Smith, said about his client's abuse of prescription drugs.

Maddox was initially arrested in October 2012 following an investigation by the Natrona County Sheriff's Office and the Wyoming Department of Corrections' internal affairs office. Two women probationers supervised by Maddox told investigators how their prescription painkillers turned up missing after she "accidentally" spilled them on the floor.

One woman, who had told Maddox that she was prescribed hydrocodone for dental pain, thought it strange that her pills went missing after a visit by her probation officer.

The same probationer also accused Maddox of stealing her puppy. She told investigators the former probation officer convinced her that the puppy was unsuitable for her and she had to give it away. When she agreed, Maddox took possession of the puppy and said she had found a new home for the dog. That new home turned out to be Maddox's own, an investigator later discovered, and the puppy was returned to its original owner.

A second probationer also reported missing prescription painkillers after Maddox visited her home. Additionally, prosecutors charged Maddox with stealing money she had collected from co-workers for a fundraising event and keeping it for her own use.

When imposing probation and the suspended prison sentence, Natrona County District Judge Catherine Wilking said Maddox had damaged the public's trust by using her position with the Wyoming Department of Corrections to serve her own purposes.

"Without faith and fidelity in the probation and parole system, nothing works in

the judicial system," Wilking stated.

"She has abused a position of trust in this community," added Natrona County District Attorney Michael Blonigen. "She had power over these people, and she exploited them."

In May 2013, Maddox was terminated from the Casper Re-Entry Center for violating her probation by taking more than her regular amount of prescription medication. She was arrested due to the violation, but later reinstated on a new three-year probation term. ■

Sources: [www.correctionsone.com](http://www.correctionsone.com), <http://trib.com>, <http://k2radio.com>

## Ninth Circuit: Exhaustion Prior to Amended Complaint Satisfies PLRA

by Mark Wilson

**O**N JANUARY 14, 2014, THE NINTH Circuit Court of Appeals held that claims raised in an amended complaint satisfy administrative exhaustion requirements under the Prison Litigation Reform Act (PLRA) if they are exhausted before the amended complaint is filed.

On December 4, 2007, Arizona prisoner Erineo Cano filed suit alleging that prison officials were deliberately indifferent to his mental illness and risk of committing suicide. He then moved to submit a first amended complaint, asserting religious diet and court access claims that arose before the original complaint was filed.

Although Cano had exhausted the new claims before seeking to file his amended complaint, prison officials moved to dismiss them, arguing that the PLRA's exhaustion requirement, 42 U.S.C. § 1997e(a), requires exhaustion of all claims before an action is filed. The district court agreed, and since Cano did not exhaust until after the initial complaint was filed, his amended claims were dismissed.

The Ninth Circuit reversed, noting it had recently held "that a prisoner may file an amended complaint and add new claims where the additional cause of action arose after the initial filing, as long as he has exhausted administrative remedies

as to those additional claims before filing the amended" complaint. See: *Rhodes v. Robinson*, 621 F.3d 1002 (9th Cir. 2010) [PLN, May 2012, p.28] and *Akhtar v. Mesa*, 698 F.3d 1202 (9th Cir. 2012) [PLN, Dec. 2013, p.42]. Cano presented "a slightly different factual situation," however, in that his amended claims arose prior to his initial complaint but were exhausted before filing the amended complaint.

"Following the logic of *Rhodes* and *Akhtar*," the appellate court held "that claims that arose as a cause of action prior to the filing of the initial complaint may be added to a complaint via an amendment, as long as they are administratively exhausted prior to the amendment." The Ninth Circuit also affirmed the district court's dismissal of Cano's claim related to mental health care.

Cano has since been released from prison, and the case remains pending on remand. See: *Cano v. Taylor*, 739 F.3d 1214 (9th Cir. 2014). ■

### **Roget's Thesaurus**

Can't think of the right word?  
Let Roget's help you! Over 11,000  
words listed alphabetically.  
See page 61 for more information.

## CHEAP LOCAL FEDERAL CALLS

*Get a local Number & Save up to 85% on Prison Calls with Sentel.  
Save on International Calls with Sentel.*

**For Packages USA, Canada and Puerto Rico only:**

<b><u>ECONOMY PLAN (USA)</u></b>	<b><u>3-MONTH PLAN (USA)</u></b>	<b><u>6-MONTH PLAN (USA)</u></b>	<b><u>12-MONTH PLAN (USA)</u></b>
<b>Price: \$14.99</b> For the first line	<b>Price: \$41.99</b> For the first line	<b>Price: \$71.99</b> For the first line	<b>Price: \$119.99</b> For the first line
<b>400 Minutes per Month</b> Duration: 1 Month	<b>400Mns per Month</b> Duration: 3 Months	<b>400Mns per Month</b> Duration: 6 Months	<b>400 Mns per Month</b> Duration: 12 Months
Additional lines @ \$2 each Best up to 4lines Monthly	Additional lines@ \$4.5 each Best up to 4lines	Additional lines @ \$6 each Best up to 4lines	Additional lines @ \$12ea Best up to 4 lines

### **For USA & INTERNATIONAL PLANS PER MINUTE RATE**

<b><u>USA &amp; INTERNATIONAL</u></b>		
<b>Price for 1st line: \$1</b> <b>Activation Fee: \$1</b>  Add a line: 50 cents Rates Based Upon Destination Guaranteed lowest rates Rollover Minutes Great for Multiple Lines	USA: 6 cents for All Mexico landline: 10 cents Mexico Cellphone: 15cents Colombia: 15 cents Nigeria: 22cents Most of Europe: 22 cents Honduras: 22 to 29 cents Guatemala: 22 to 29 cents Jamaica: 29 cents	Dominican Rep: 15 cents Haiti: 35 cents India: 10 cents China: 10 cents Ecuador: 29 to 35 cents Most of our International rates : 22cents For Areas not Cited Please contact us

**We accept debit and credit card payments, institutional checks, bank deposits and paypal**

**Sentel, Sentel**

**9550 S. Eastern Ave Ste 253**

**Las Vegas, NV 89123**

**Ph: 702-430-9445**

**Email: [sentel.nv@gmail.com](mailto:sentel.nv@gmail.com)**

**Website: [www.sentelinmatecall.com](http://www.sentelinmatecall.com)**

**Note : Please do not send any inquiries by mail. Mail is only for orders and payments.**

**Note: We do not provide service to County Jails and States Prisons**

# Fifth Circuit Holds Louisiana Commutation Changes Not *Ex Post Facto*

by Matt Clarke

IN AN OPINION FILED MAY 21, 2013, THE Fifth Circuit Court of Appeals held that changes to commutation laws and rules in Louisiana, which gave the pardons board the authority to deny a hearing on commutation and increased the amount of time before a prisoner could reapply for commutation, did not violate the constitutional prohibition against *ex post facto* laws.

Robert Howard, a Louisiana state prisoner sentenced to life in 1968, has served over forty years. Life-sentenced prisoners in Louisiana are not eligible for parole; to become eligible, a prisoner serving life must first have his sentence commuted to a fixed number of years.

At the time of Howard's offense, the rules of the Board of Pardons allowed a prisoner to reapply for a pardon or commutation one year after the previous board action. At that time, the governor could grant commutations based upon the recommendation of two of the following officials: the lieutenant governor, attorney general and trial court judge.

A revised state constitution enacted in 1974 created a new Board of Pardons; the governor could only grant pardons upon the board's recommendation. Later changes in state law mandated a five-year period between commutation applications. Subsequent changes in board rules allowed the board to refuse to grant a hearing on an application for commutation, and those changes were applied to Howard to deny him a hearing.

Howard filed a federal civil rights

action against the governor and Board of Pardons members, alleging that applying the changes in the laws and rules violated the *ex post facto* clause by creating a significant risk of increasing the length of his incarceration. The district court granted summary judgment to the defendants and Howard appealed.

Assuming *arguendo* that the *ex post facto* clause applies to changes in commutation procedures, the Fifth Circuit held that the changes in question resulted in only an attenuated and speculative chance of increasing Howard's length of incarceration. The Court of Appeals noted that being granted a hearing did not mean Howard would receive a favorable recommendation, as he had had hearings in the past in which such a recommendation was denied.

Further, a favorable recommendation did not mean he would receive a commutation, as he had been favorably recommended previously to three different governors, none of whom granted commutation. Finally, being granted commutation would not mean that he would then be paroled; it would only make him eligible for parole. Thus, it was extremely speculative that the commutation changes created a significant risk of increasing Howard's incarceration, and consequently they did not constitute *ex post facto* violations.

The judgment of the district court was affirmed. Howard petitioned the U.S. Supreme Court for a writ of certiorari, which was denied in November 2013. See: *Howard v. Clark*, 719 F.3d 350 (5th Cir. 2013), *cert. denied*. ■

## Second Circuit: Spraying with Feces Not *De Minimis* Injury; \$7,000 Settlement After Remand

by Mark Wilson

THE SECOND CIRCUIT COURT OF APPEALS held on December 20, 2013 that spraying a prisoner with a mixture of feces, vinegar and oil is not a *de minimis* injury.

New York state prisoner John Hogan was confined at the Attica Correctional Facility on February 14, 2009 when he claimed three guards with their faces concealed by brown paper bags sprayed vinegar, feces and machine oil on his body and in his mouth,

eyes and nose in retaliation for his having reported several other staff assaults. As a result, he suffered recurring eye and skin problems plus significant psychological harm.

On May 5, 2009, Hogan filed suit in federal court against several named and John Doe guards. Despite numerous discovery and public records requests over a three-year period, he was unable to identify the guards who sprayed him.

### Incarcerated Students: Earn an Adams State University Degree via Correspondence Courses Through the Mail



- No internet access required
- Degree options available — Associate of Arts or Science, Bachelors degrees in English, Business Administration, Government, History, Interdisciplinary Studies, Sociology, Paralegal Certificate Program, Masters Degree in Business Administration
- Affordable tuition — \$165/semester hour for undergraduate correspondence courses, \$350/semester hour for Masters level correspondence courses. Payment options include cashiers check, credit card, money order or verified personal check.
- Accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools (the highest level of post-secondary accreditation available)
- 20+ years of experience serving incarcerated students
- Veteran friendly/GI Bill accepted
- FREE unofficial evaluation of previously earned credits
- Student advisor with over 21 years working with incarcerated individuals



Great Stories Begin Here

EXTENDED STUDIES

Prison College Program

Call or write to receive additional information — 800-548-6679

Adams State University

Office of Extended Studies, Suite 3000  
208 Edgemont Blvd. Alamosa, CO 81101

[www.adams.edu](http://www.adams.edu)



Pursuant to FRCP 12(b)(6) and 12(c), the defendants moved to dismiss Hogan's claims against only the named guards in his complaint. The Attorney General's office expressly stated the motion was not brought on behalf of any John Doe defendants. Nevertheless, the district court dismissed the action in its entirety, and denied Hogan's pending discovery motions as moot.

The district court concluded "that spraying a person with feces and vinegar was a *de minimis* use of force and not of a sort repugnant to the conscience of mankind."

The Second Circuit disagreed, holding that Hogan had stated a cognizable Eighth Amendment claim. The appellate court was "unwilling to accept, as a matter of law, the proposition that spraying an inmate with a mixture of feces, vinegar, and machine oil constitutes a *de minimis* use of force." In fact, such an abusive action "in the circumstances alleged here is undoubtedly 'repugnant to the conscience of mankind' and therefore violates the Eighth Amendment."

The Court of Appeals also rejected the defendants' argument that expiration of the statute of limitations barred Hogan from amending his complaint on remand

to name the Doe defendants.

The Court found that under FRCP 15(c)(1)(A), the John Doe claims related back to the date the initial complaint was filed, because New York Civil Practice Law and Rules § 1024 permits such substitutions *nunc pro tunc*.

Thus, the Second Circuit concluded that Hogan's Doe claims were not time-barred, and he should be allowed to continue his efforts to identify those defendants and be granted leave to amend to name any unknown defendants he is able to identify. The appellate court further suggested that it may be helpful for the district court to appoint counsel to assist Hogan "in pursuing the necessary discovery, drafting any appropriate amendments to the complaint, and prosecuting his claim." See: *Hogan v. Fischer*, 738 F.3d 509 (2d Cir. 2013).

Following remand, the case settled on September 12, 2014 for \$7,000 with no admission of

liability by the defendants. Hogan litigated the case pro se, including on appeal. ■

## WISDOM IS THE KEY TO SUCCESS Get Wise; Get a SMITH'S GUIDE™

### SMITH'S GUIDE to Executive Clemency for State and Federal Prisoners

For those who have exhausted all legal remedies or have sentences that are too long to serve, this book lays out every aspect of the clemency process. [288 pages]

### SMITH'S GUIDE to Chapter 7 Bankruptcy for Prisoners (June 2014)

Get immediate freedom from liens against offender account by filing chapter 7 bankruptcy. Includes required bankruptcy forms and detailed filing instructions.

\$24.95 + \$6.95 shipping/handling (in CA, include additional sales tax of \$2.18) for each book. Please specify book(s) ordered. Sent via USPS media mail. Money orders, personal checks or institutional checks ONLY. Send name, address and DOC/BOP number, with payment of \$31.90 (in CA, \$34.08) per book, payable to Roberts Company:

Roberts Company, 15412 Electronic Lane #101  
Huntington Beach, CA 92649  
Also available on Amazon.com

**ORDER THE NEW PRISON OFFICIAL CATALOG - ONLY \$10**

**PRISON OFFICIAL**  
WWW.PRISONOFFICIAL.COM

**ISSUE #1 OR ISSUE #2**  
5 FREE HOT MODEL PHOTOS INCLUDED WITH PURCHASE

**INMATES #1**  
RECOMMENDED

**CORRECTIONAL FACILITY APPROVED**

**GET MAIL** **DONT DELAY**

**ORDER THE NEW PEN PAL LIST  
OF 50 REAL ADDRESSES TO  
FEMALES WAITING TO CORRESPOND  
TO PRISONERS**

**RECENT PHOTOS INCLUDED!**  
**SEND \$49.95**

Inmates post your profile on our Pen Pal website  
**www.PrisonOfficial.com**  
2 year membership - Send \$30  
250 word limit send S.A.S.E for return of your photo

**Send Facility Checks/Money Orders To:**  
**MUST ADD \$2 S/H  
TO ALL ORDERS**  
**PRISON OFFICIAL  
P.O. BOX 1427  
WARRENVILLE IL 60555**

**PRISONER ASSISTANT**  
REHABILITATION AND REENTRY PLANNING

**Join Our Exclusive Membership, Open a Bank  
Account and Gain Access to Our Services!** **MEMBERS ONLY**  
We provide full services to our membership clients.

**A Bank Account under your social security number  
is the only way to build a positive banking history.**  
Deposits, Statements, Money Orders, Bank Checks, **BANKING & FINANCE**

**Prisoner Concierge** Internet Purchases, Gift Cards, Current Events,  
People Search, Personal Shopper and much more.  
"If It Can Be Done, We Will Try To Do It"

We can do any Graphic Design project. Printed Material,  
Musical Emails, Creative Writing, Photo Reproduction &  
Forwarding, Book Publishing, Book Cover Design, Press  
Releases, Portfolio Creation, and Website Design. **GRAPHIC**

**Virtual Office** Mailboxes, Emails, Texts, Scanning, Copies, Typing,  
Storage, Document Preparation, Internet Research,  
Prepaid, Contract & Computer Aided Phones. **social content media**

Place your profile on [prisonerassistant.com](http://prisonerassistant.com) and access  
our Special Features; Classifieds, Portfolios, Posts &  
Blogs, Market Place and Sponsor a Prisoner.

PO Box 704-AD1  
Lake Harmony, PA 18624-0704  
[www.prisonerassistant.com](http://www.prisonerassistant.com)  
[info@prisonerassistant.com](mailto:info@prisonerassistant.com)  
(570) 722-5800

For more information - send \$4.50  
to "Prisoner Assistant" for an  
Application Package and 80 page  
color catalog. If you send an SASE  
you will only receive a brochure.  
**NO PERSONAL CHECKS ACCEPTED**

**Business Development** **JOIN NOW!** **Credit Development**

**The services below are available to all prisoners - not just our clients!**

**On Demand Services** **PRISONER ASSISTANT NOW OFFERS  
SELECT SERVICES TO ALL PRISONERS!  
NO MEMBERSHIP NECESSARY!**

**SEND AN SASE FOR OUR ON DEMAND BROCHURE**

**Banking and Financial  
Management Course**  
120 pages, complete  
course with 8 chapters and  
exams. Transcript and  
Certificate available. Send  
\$30.00 to Prisoner Assistant  
at the address above  
with a request for the  
course. Open to Everyone.

**Personal Reentry  
Guide and Journal**  
233 pages, complete  
course with 7 chapters and  
exams. Transcript and  
Certificate available. Send  
\$35.00 to Prisoner Assistant  
at the address above  
with a request for the  
course. Open to Everyone.

**NO PERSONAL CHECKS ACCEPTED**

# Ninth Circuit Revives Ad Seg 24-Hour Lighting Claim

by Mark Wilson

ON JANUARY 16, 2014, THE NINTH Circuit Court of Appeals reversed a summary judgment order dismissing a prisoner's claim related to 24-hour lighting in a segregation cell.

While incarcerated at the Airway Heights Corrections Center, Washington prisoner Neil Grenning was placed in administrative segregation (ad seg) for thirteen days "pending investigation" of his alleged involvement in a fight. Ad seg cells are lit by three four-foot-long fluorescent light tubes. Prisoners can turn off two of the tubes, but one remains illuminated at all times.

Grenning stated in a grievance that he could not sleep and suffered headaches due to the constant lighting. When prison officials refused his request to replace the tube with something that produced less light, he filed suit. He alleged that the continuous lighting violated the Eighth Amendment because "the light was so bright he could not sleep, even with 'four layers of towel wrapped around his eyes.'" Grenning also

claimed "that the lighting gave him 'recurring migraine headaches' and that he could not distinguish between night and day in the cell." He said the light caused him pain and disorientation.

The district court granted summary judgment to the defendant prison officials, holding that Grenning had not established an Eighth Amendment violation.

The Ninth Circuit reversed. The appellate court first rejected the defendants' argument that Grenning's claims were barred by the "physical injury" requirement of the Prison Litigation Reform Act, 42 U.S.C. § 1997e(e).

Citing *Oliver v. Keller*, 289 F.3d 623 (9th Cir. 2002) [PLN, April 2003, p.24], the Court of Appeals noted that § 1997e(e) applies only to claims of mental and emotional injury. "This section does not bar Grenning's case," the Court held, "because he does not seek recovery for 'mental or emotional injury.'"

The Ninth Circuit then observed it had previously "held that continuous lighting can satisfy the objective" prong of a deliberate indifference claim, and that issues of fact as to how bright the light was, its effect on Grenning and whether prison officials were deliberately indifferent precluded summary judgment. Further, the appellate court re-

jected the defendants' argument that Airway Heights was accredited by the American Correctional Association and complied with ACA standards for cell lighting.

Noting that qualified immunity had not been addressed, the Court of Appeals left that issue "for the district court to determine in the first instance on remand."

Additionally, Grenning was allowed to proceed *in forma pauperis* and the district court withheld 20% of his prison wages to pay court fees pursuant to 28 U.S.C. § 1915(b). The Ninth Circuit also granted Grenning *in forma pauperis* status on appeal, and another 20% of his funds was withheld to pay the appellate filing fee.

Relying on *Torres v. O'Quinn*, 612 F.3d 237 (4th Cir. 2010), Grenning asked the Ninth Circuit to cap the total fee withholdings at 20% under "a method called the 'sequential' or 'per prisoner' approach." The defendants argued that 40% was proper under "a method termed the 'simultaneous' or 'per case' approach." The appellate court declined to decide the issue, however, directing the lower court to consider it on remand.

This case remains pending before the district court, with Grenning now represented by counsel. See: *Grenning v. Miller-Stout*, 739 F.3d 1235 (9th Cir. 2014). ■

 **NOLO**



## Win Your Lawsuit

Sue in California Superior Court  
Without a Lawyer

— \$39.99 —

Order from **Prison Legal News**

P.O. Box 1151

Lake Worth, FL 33460

561-360-2523

Add \$6 shipping for orders under \$50

[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

## Calling for Essays by Incarcerated Americans, Prison Workers, and Prison Volunteers

The American Prison Writing Archive (APWA) is an internet-based, non-profit archive of first-hand testimony to the living and working conditions experienced by incarcerated people, prison employees, and prison volunteers. Anyone who lives, works, or volunteers inside American prisons or jails can contribute non-fiction essays, based on first-hand experience: 5,000 word limit (15 double-spaced pages); a signed APWA permission-questionnaire must be included in order to post work on the APWA. All posted work will be accessible to anyone in the world with internet access. For more information and to download the permissions-questionnaire, go to: <http://www.dhinitiative.org/projects/apwa/>, or write to: APWA, 198 College Hill Road, Clinton, NY 13323-1218. Sincerely—The APWA Editors.

# Seventh Circuit Extends Appeal Filing Deadline for Prisoner Misled by Court Clerk

by Matt Clarke

**I**N A WELL-CRAFTED OPINION DELIVERED on August 8, 2013, the Seventh Circuit Court of Appeals held that a prisoner who was misled by a court clerk regarding the status of his habeas corpus petition should be allowed to appeal the district court's ruling despite his notice of appeal being filed more than two years after the petition was decided.

Michael Carter, an Illinois state prisoner, filed a petition for writ of habeas corpus in federal court pursuant to 28 U.S.C. § 2254. The district court denied the petition on February 10, 2011 but failed to make a separate judgment or send a copy of the opinion to Carter. On December 5, 2011, Carter wrote to the court clerk inquiring about the status of his petition. The clerk responded that no action had been taken and he would be promptly notified by mail when an order was entered. About a year later, Carter contacted the clerk again. This time he was informed of the judgment in a

letter received on March 22, 2013.

Carter filed a notice of appeal less than a month later. The appellate court, in screening new filings for possible jurisdictional problems, noticed the length of time between the judgment and notice of appeal.

The Seventh Circuit held that because the district court had failed to issue a separate judgment pursuant to Federal Rule of Civil Procedure 58(c)(2), the judgment would not be considered rendered until 150 days after the denial of the petition was entered on the docket. A petitioner who did not receive actual notice of the denial would then have 180 days to request reopening of the case in order to file a notice of appeal. The 150 days added to the 180 days would have brought the filing date up to January 7, 2012, about a month after Carter had been erroneously informed by the court clerk that his petition was still pending. Thus, had the clerk not misled him, he could have reopened the case and filed a

timely notice of appeal.

The time for filing a notice of appeal is not subject to equitable tolling, "the judge-made doctrine, well established in federal common law, that excuses an untimely filing when the plaintiff could not, despite the exercise of reasonable diligence, have discovered all of the information he needed in order to be able to file his claim on time." However, equitable tolling can be applied to the 150-day period, and it was in the interest of justice to do so since the clerk had misled Carter and "[h]e could not, considering his situation as a prisoner without legal sophistication or a lawyer, have learned this essential information earlier."

Therefore, the Court of Appeals tolled the 150-day period until March 22, 2013, when Carter learned of the judgment. This made his notice of appeal timely and the appellate court therefore declined to dismiss his appeal. See: *Carter v. Hodge*, 726 F.3d 917 (7th Cir. 2013). ■

# SPORTZZBUZZ

(pronounced SPORTS-BUZZ!)

THE OFFICIAL PROVIDER OF SPORTS SCORES, LINES, AND MUCH MORE FOR FEDERAL INMATES.

GET UP-TO-DATE SPORTS INFORMATION SENT DIRECTLY TO YOUR CORRLINKS EMAIL FOR ONLY

## \$5 / MONTH\*



ADD [INFO@SPORTZZBUZZ.COM](mailto:INFO@SPORTZZBUZZ.COM) TO YOUR CORRLINKS EMAIL  
SUBSCRIPTION LIST FOR MORE INFORMATION AND A FREE SAMPLE!  
\*\$5 MONTHLY RATE AVAILABLE ONLY ON 12 MONTH SUBSCRIPTION  
FANTASY FOOTBALL STATS AVAILABLE FOR A SMALL ADDITIONAL FEE



# Colorado: Sentencing Court May Override Sexually Violent Predator Risk Assessment Score

by Matt Clarke

THE COLORADO SUPREME COURT HAS held that a sentencing court may designate a person convicted of a sexual offense a Sexually Violent Predator (SVP) even if a risk assessment instrument (screening instrument) indicates that the person is unlikely to commit another sex offense. However, the sentencing court must make specific findings on the record to demonstrate the necessity of the SVP designation.

Brandon David Allen, a Colorado state prisoner, pleaded guilty to first-degree sexual assault and other charges related to breaking into his neighbor's home, grabbing her by the throat, threatening to kill her and repeatedly raping her. After the trial court sentenced him to 20 years to life in prison, it considered whether he should be designated an SVP.

Under § 18-3-212.5(1)(a), C.R.S. (2012), an offender who was at least 18 years old at the time of committing an enumerated sexual offense against a stranger or victim with whom the offender established a relationship primarily for the purpose of sexual victimization, and is likely to recidivate based on the results of the screening instrument, can be designated an SVP. A Sex Offender Management Board (SOMB)-trained evaluator administers and scores the screening instrument, then provides the result to the trial court.

The score, which ranges from one to ten, indicates the likelihood of recidivism. It is based upon ten indicators, six of which pertain to the offender's background and four that relate to the crime, acceptance of responsibility and degree of sexual deviancy. The only indicator scored against Allen related to admitting the crime, which he claimed not to remember.

The evaluator scored Allen as a one – below the threshold of being likely to reoffend. However, the trial court re-scored the screening instrument, determined that Allen was likely to recidivate and designated him as an SVP. Allen appealed. The Court of Appeals affirmed, and Allen's petition for review was granted.

The *en banc* Colorado Supreme Court held that the trial court should not have re-scored the screening instrument, but should

have substantially deferred to it. Further, if a trial court deviates from the results of the scored screening instrument, it must make "specific findings on the record to demonstrate the necessity of the deviation."

The Supreme Court then examined the record and held that Allen's likely "deviant sexual fantasies," difficulty with

relationships, threatening to kill the victim to avoid punishment, denial of the crime and two prior incidents in which women sought restraining orders against him made it likely that he would reoffend. Therefore, his designation as an SVP was upheld. See: *Allen v. People*, 2013 CO 44, 307 P.3d 1102 (Colo. 2013). ■

## Seventh Circuit Upholds Dismissal of Illinois Booking Fee Challenge

by Mark Wilson

IN JANUARY 2014, THE SEVENTH CIRCUIT Court of Appeals upheld the dismissal of a challenge to a jail's booking fee policy.

The Village of Woodridge, Illinois imposes a \$30 booking fee on any person who is arrested and taken into custody. The fee is collected without any hearing, or opportunity to challenge the deprivation or seek reimbursement.

On January 8, 2011, Jerry G. Markadonatos was arrested and booked into jail. He paid the \$30 booking fee and was given a receipt, but was not afforded a hearing or any other opportunity to challenge the fee.

After Markadonatos successfully completed a period of supervised release, he was adjudicated "not guilty." Despite this favorable resolution the booking fee was not refunded and he was denied an opportunity to seek reimbursement.

Markadonatos filed suit on behalf of himself and all arrestees who were charged the booking fee, alleging that the fee violates procedural and substantive due process. The district court dismissed the action for failure to state a claim.

The Seventh Circuit affirmed. Applying the balancing test in *Matthews v. Eldridge*, 424 U.S. 319 (1976), the Court of Appeals concluded "that the district court was correct in holding that Mr. Markadonatos cannot state a procedural due process violation based upon Woodridge's booking fee ordinance." The Court reasoned that "the risk of an erroneous deprivation" was "practically non-existent," and "additional

safeguards would not in any way reduce the risk thereof."

The appellate court also held that Markadonatos was unable to climb the "steep hill" of proving that collection of the booking fee "shocks the conscience." The Seventh Circuit ultimately concluded "that Woodridge's booking fee does not violate Mr. Markadonatos' right to substantive due process" because no fundamental right was implicated and the fee was rational and not arbitrarily imposed. Accordingly, the district court's order of dismissal was affirmed.

One judge dissented, likening the defense of the booking fee to the Queen of Hearts' philosophy of "sentence first, verdict afterwards" in *Alice in Wonderland*, and to the doublespeak of George Orwell's 1984, "where language is used to mean the opposite of reality."

"This should be a simple case," the lengthy dissent suggested. "The village's 'booking fee' ordinance is unconstitutional on its face. It takes property from all arrestees – the guilty and innocent alike – without due process of law." See: *Markadonatos v. Village of Woodridge*, 739 F.3d 984 (7th Cir. 2014).

The dismissal of the case was upheld in a divided *en banc* Seventh Circuit opinion on July 21, 2014, with five judges voting to affirm the district court, four voting to reverse and one voting to remand with instructions to dismiss due to lack of standing. See: *Markadonatos v. Woodridge*, 2014 U.S. App. LEXIS 13856 (7th Cir. 2014). ■





## State of Washington Prison Phone Justice Campaign

### Fighting the High Cost of Prison and Jail Phone Calls!

The Human Rights Defense Center (HRDC) has been reporting on the high cost of telephone calls from prisons, jails and other detention facilities in the U.S. for over two decades in its monthly publication *Prison Legal News*. An award of funds from the settlement in *Judd v. AT&T*, a prison phone-related lawsuit, has allowed us to launch the Washington Prison Phone Justice Campaign (WA PPJ). The goal of the campaign is to eliminate the kickbacks paid by telephone companies to detention facilities and to regulate the exorbitant rates charged to prisoners, their families and others who accept prison phone calls, including attorneys. Video visitation, which is following closely on the same path as the prison phone industry, has also been incorporated into the campaign.

HRDC co-founded the national Prison Phone Justice Campaign in 2011, which resulted in a historic vote by the FCC in August 2013 that capped the rates for **interstate** (long distance) prison phone calls at \$.25/minute for collect calls and \$.21/minute for debit and prepaid calls. Those rate caps became effective on February 11, 2014. While this has helped millions of families stay connected across state lines, it did nothing for prisoners incarcerated in Washington State who make local and **intrastate** (in-state) calls, estimated by the FCC to constitute 85% of all prison and jail calls.

Studies show that a prisoner's ability to communicate with family and friends while incarcerated results in a smoother transition upon release and reduces recidivism. However, excessive phone rates hamper and sometimes eliminate the ability of prisoners to stay in touch with their loved ones.

We need everyone affected by this issue, including prisoners' family members and attorneys, to sign on to the WA PPJ Campaign and tell us how they have been impacted by high prison and jail phone rates. This can be done by accessing the Campaign's website: **www.wappj.org**. Testimonials and video can be uploaded to the site, or people can call 1-877-410-4863 to record their comments. Or comments can be written and mailed to: HRDC, Attn: WA PPJ Campaign, P.O. Box 1151, Lake Worth, FL 33460. We also need billing records from prepaid accounts (2012 to current) for phone calls received from detention facilities, to demonstrate the actual rates charged to recipients of the calls. Billing records can be emailed to: [cwilkinson@humanrightsdefensecenter.org](mailto:cwilkinson@humanrightsdefensecenter.org).

Lastly, any donations to fund the campaign are both needed and appreciated; donations can be made at **www.prisonphonejustice.org**. Only with your support will we be able to end the abusively high costs of prison and jail phone calls in Washington State. Thank you for your support, and please tell others about the Washington Prison Phone Justice Campaign and encourage them to join!

# ICE Implements New Directive to Limit Solitary Confinement

CIVIL RIGHTS AND IMMIGRATION ADVOCACY groups are watching closely to see the results of a change in federal policy governing the placement of immigrant detainees in solitary confinement, which was implemented one year following the release of a damning report on that issue.

Immediately after the policy was adopted by Immigration and Customs Enforcement (ICE) on September 4, 2013, the American Civil Liberties Union pledged to “closely monitor the implementation of the new directive,” which the ACLU cautiously hailed as a step in the right direction toward ending segregation and solitary confinement for immigrant detainees.

“The new ICE directive sets a good example for the prison system writ large when it comes to monitoring the use of solitary confinement,” Ruthie Epstein, an ACLU legislative policy analyst, said in a written statement.

“If strictly enforced throughout the ICE detention system – including at county jails and contract facilities – ICE’s new policy could represent significant progress in curtailing this inhumane practice,” she added, noting the directive “sets important limits on the use of solitary confinement. Solitary confinement in both immigration detention and the criminal justice system is cruel, expensive, and ineffective.”

The policy change reflects a commitment by former Homeland Security Secretary Janet Napolitano to review ICE’s segregation practices in the wake of a joint study by two human rights organizations that reported immigrant detainees were increasingly placed into solitary confinement in jails and detention centers simply because they were mentally ill, due to their sexual orientation or because they could not speak English.

The Heartland Alliance’s National Immigrant Justice Center and Physicians for Human Rights stated in a September 2012 report that conditions for immigrant detainees placed in isolation not only endangered their health and safety, but also pressured them “to abandon their options for legal relief, their families, their communities, and often the only country they have ever known.”

According to the report, the immigrant detainee population grew 85% between 2005 and 2012, as ICE annually

imprisoned 400,000 detainees. The report cited the dramatic increase for creating the “fastest-growing incarceration system” in the nation, with nearly 250 state and local facilities – not including detention centers operated by ICE or private contractors – holding immigrant detainees alongside criminal offenders.

Traditionally, the purpose of immigration detention has been not to punish detainees for allegedly violating immigration laws, but to ensure their appearance at court hearings. Yet the report found an alarmingly high number of immigrants were placed in solitary confinement or 23-hour lockdown, where they were deprived of exercise, proper nutrition and human contact.

In a review of local jails that contract with ICE, the report found solitary confinement policies to be “inappropriately punitive,” arbitrary and unjust. “This severe form of segregation, especially when it is used for long periods of time,” the report stated, “is rarely necessary to achieve order in a jail or detention facility.”

The study cited multiple examples of immigrant detainees who were placed in segregation or isolation solely because they belonged to “vulnerable populations,” such as being gay, bisexual, transgender or mentally ill.

In southern California’s Ventura County Jail, for example, guards segregated “obvious alternative lifestyle inmates.” The Washoe County Jail in Nevada had a policy that explicitly stated detainees with “overt homosexual tendencies” were to be placed in administrative segregation, while a jail in Cobb County, Georgia called for the segregation of “gender challenged” prisoners who demonstrate “past or current ... passive-aggressive behavior.”

In other facilities, guards justified using segregation and solitary confinement to “discriminate against non-English-speaking immigrants,” the report found. Failure to speak English “when able,” or watching Spanish channels on television, could lead to 23-hour lockdown at the Nobles County Jail in Minnesota, where English is the “primary” language “to ensure the safety and security of the facility.”

The report also found that many jails punished immigrant detainees for violating trivial rules, such as putting their feet on tables or singing loudly. Detainees at

the Stewart Detention Center in Georgia stated they were placed in segregation because they complained about the quality of the drinking water. Two detainees in York County, Pennsylvania – who each had cellmates serving criminal sentences – said they were segregated because they didn’t notice that their identification wristbands had come off.

A victim of domestic violence who was detained for almost a year at the McHenry County Correctional Facility in Illinois while her visa application was pending was placed in disciplinary segregation on separate occasions for having an extra blanket, bra and pair of socks; for placing a shampoo bottle on her windowsill; and for having newspaper articles in her cell.

And in the Washoe County Jail, detainees must work to avoid isolation, according to the facility’s policy manual. Commissary, library access and visitation are privileges that have to be “earned” by working at the facility, the manual states. Refusing to work results in “lockdown and failure to earn any privileges.”

The National Immigrant Justice Center and Physicians for Human Rights report also found that solitary confinement was sometimes applied to immigrant detainees “in lieu of mental health treatment.” Qualified mental health staff is “rarely on-site” at immigration detention centers, despite “extremely high rates of anxiety, depression, and PTSD (Post Traumatic Stress Disorder) symptoms among detainees.”

The report further noted that while detainees already struggle to understand why they’ve been incarcerated for allegedly violating immigration laws, “the further deprivation of liberty inherent in segregation and solitary confinement might be reasonably expected to compound the psychological stress of detention.”

The report called on ICE to end the use of segregation and solitary confinement in immigration detention centers by not contracting with jails or jail-like facilities, and by “placing vulnerable individuals in alternatives to detention (ATD) programs” or releasing them on humanitarian parole. The report also called on Congress to reduce funding for immigration detention and instead enact “binding civil detention standards so that facilities that detain immigrants can be held legally accountable

for improper use of segregation and solitary confinement.”

As a result of the firestorm of media coverage generated by the report, a year later ICE announced a new policy that jails and detention centers are required to follow when holding immigrant detainees in solitary confinement.

“Placement of detainees in segregated housing is a serious step that requires careful consideration of alternatives,” the policy states. “Placement in segregation should occur only when necessary and in compliance with applicable detention standards.” Additionally, “placement in administrative segregation due to a special vulnerability should be used only as a last resort and when no other viable housing options exist.”

In issuing the new directive, ICE pledged to “ensure the safety, health and welfare of detainees in segregated housing in its immigration detention facilities,” and to quickly review cases involving detainees in vulnerable groups who are held in solitary “for over 14 days” or placed in segregation “for any length of time in the case of detainees for whom heightened concerns exist based on known special vulnerabilities and

other factors related to the detainee’s health or the risk of victimization.”

Those vulnerable groups include detainees with mental illnesses and severe medical conditions or disabilities, pregnant or nursing women, the elderly, and anyone who might be susceptible to harm due to their sexual orientation, gender identity or because they have been victims of sexual assault.

The National Immigrant Justice Center and Physicians for Human Rights faulted the new ICE policy, however, for not eliminating entirely the use of extended solitary confinement, nor allowing independent, third-party oversight of the policy’s implementation and enforcement.

The U.S. Senate also acted in the aftermath of the report, in the form of an amendment to an immigration reform bill that placed further restrictions on the use of segregation and solitary confinement for immigrant detainees. The bill, S.744, passed the Senate but the U.S. House of Representatives has failed to act on the legislation. ■

Sources: “*Invisible in Isolation: The Use of Segregation and Solitary Confinement in*

*Immigration Detention*,” *Heartland Alliance and Physicians for Human Rights* (Sept. 2012); [www.immigrantjustice.org](http://www.immigrantjustice.org); [www.aclu.org](http://www.aclu.org); *ICE policy directive 11065.1*; [www.solitarywatch.com](http://www.solitarywatch.com)

## Corcoran Sun

Full Color Prison Yard Monthly  
News ♦ Entertainment ♦ Resources

**3 Month Special Subscription**

**\$5 or 20 FCS Stamps**

**NOW 20 PAGES**

Expanded full color format with exciting episodes of thrilling novels and sexy pics. Many how-to articles on writing, art, music and health. Filled with entertainment: puzzles, trivia, jokes, poetry... Submit your writing, art, poetry etc. See your submission, name and contact info in print.

**Special 6-Issue Subscription (\$10 or 40 FCS stamps)**

**Special Year Subscription (\$20 or 80 FCS stamps)**

NEW Books/Sheets/Strips ONLY No singles on special please



**Freebird Publishers**

Box 541, North Dighton, MA 02764

[www.FreebirdPublishers.com](http://www.FreebirdPublishers.com)

[Diane@FreebirdPublishers.com](mailto:Diane@FreebirdPublishers.com)



## Texas Families for Justice Rally

RSVP at [www.tifa.org](http://www.tifa.org)



The Texas Families for Justice Rally is a grassroots effort led by people, most with imprisoned loved ones, organized to bring attention to a broken criminal justice system.

It is only with your support we will be successful.  
Please mail this notice to your family members.

**Friday, November 7th**  
**12 - 3PM**  
**South Steps of the**  
**State Capitol**  
**Austin, Texas**

Brought to you by TIFA, Texas Voices & TxCure. Questions? Call 512-371-0900 or email [tifa@tifa.org](mailto:tifa@tifa.org)

# “Ban the Box” Movement Spreads Nationwide

by Joe Watson

**P**RISONER ADVOCACY GROUPS ARE HAILING recent successes in “Ban the Box” campaigns to remove questions related to criminal records from employment applications, and say they hope to expand the movement even further as momentum grows to help ex-offenders find jobs.

San Francisco became the first city in the nation to adopt a Ban the Box policy that includes private employers and affordable housing, when Mayor Ed Lee signed the Fair Chance Ordinance on March 4, 2014. The law bars private companies with more than 20 employees, contractors that hold city contracts worth more than \$5,000 and any residential building that has received city funding from asking about a potential applicant’s criminal history prior to conducting a job interview or reviewing a housing application.

“Ban the Box” is the catchphrase coined by All of Us or None, a San Francisco-based advocacy organization composed of formerly-incarcerated people and their families, founded in 2003. It refers to the question on job applications, usually accompanied by a check-box, that asks whether an applicant has a criminal history.

Employers can still ask about convictions later in the hiring process and deny job offers based on criminal records, but removing the question from job applications allows ex-prisoners to get their foot in the employment door. During subsequent interviews they can explain their criminal history, how they have changed and why they should be hired.

Under San Francisco’s new law, employers are also required to consider whether a job applicant’s conviction is relevant to the position they are seeking, how long ago the conviction occurred and any evidence the applicant can provide of rehabilitation.

“San Francisco now has the distinguished honor of being the first legislative body in the country to protect its citizens from discrimination based on their conviction history in both private employment and affordable housing,” wrote attorney Noah Frigault, with the San Francisco Human Rights Commission.

In passing the ordinance, the city’s Board of Supervisors demonstrated its determination to deal with what it saw as a worsening issue. “In San Francisco, as across the country, individuals are often plagued by

old or minor arrest or conviction records.... The problems presented by employers and housing providers who use a person’s criminal history to deny that person employment or housing opportunities are growing rather than diminishing,” the Board stated.

The Fair Chance Ordinance came on the heels of a law signed by California Governor Jerry Brown that prohibits taxpayer-funded public employers in the state from rejecting prospective job-seekers who have criminal records without first considering the applicants’ qualifications for the position.

Effective July 1, 2014, California Assembly Bill 218 requires more than 6,000 local and regional public agencies – all local governments in the state – to remove the check-box question on job applications that asks “Have you ever been convicted of a felony?” The National Employment Law Project (NELP), an advocacy group for low-wage workers, estimates that about 7 million people in California have an arrest or conviction record.

“The Legislature finds and declares,” states the bill, written by Assemblyman Roger Dickinson, “that reducing barriers to employment for people who have previously offended, and decreasing unemployment in communities with concentrated numbers of people who have previously offended, are matters of statewide concern.”

Exempting public safety jobs, such as law enforcement officers, AB 218 also requires government agencies to delay criminal background checks until after determining that an applicant meets the job qualification requirements.

“The problem of people with criminal records is at a critical point,” said Michelle Rodriguez, a staff attorney with NELP. “We have huge numbers of people who can’t get work and at the same time more and more people who have gone through the criminal justice system.”

Having AB 218 signed into law “was really huge for us, an extremely important victory,” stated Dorsey Nunn, director of the San Francisco-based Legal Services for Prisoners with Children, and co-founder of All of Us or None. “At issue is the question of ‘how do formerly incarcerated people get back into society?’ For someone who is a former prisoner, the law has said it is okay to be three-quarters of a human being once

you’ve been convicted of a crime. We’re asking for equal access. For fairness.”

Rodriguez hopes the Ban the Box movement will grow through the rest of 2014 and beyond. “This issue has really resonated with so many groups on the ground across a wide spectrum – it’s absolutely magnetic,” she said.

“This year, we’ll focus on what else we can do to build on the momentum,” Rodriguez added. “How can we rope in private employers in California, and identify other opportunities? Unions, for instance, were a huge part of this effort, and there are a lot of other criminal justice workforce-related issues they can be helpful with.”

AB 218 codifies an executive order establishing the new hiring practices that was first issued by former Governor Arnold Schwarzenegger in 2010. According to NELP, 13 states and almost 70 cities and counties have enacted similar legislation as of September 2014, including Hawaii, which adopted the first Ban the Box law 16 years ago. [See: *PLN*, Sept. 2011, p.32].

In May 2013, Minnesota Governor Mark Dayton signed into law a statute prohibiting private as well as public employers from asking about job-seekers’ criminal records until the first interview. The state of Maryland adopted similar legislation in May 2013, and the governor of Illinois, Pat Quinn, issued an executive order removing the question concerning background checks from applications for state employment.

Other states with Ban the Box statutes include Colorado, Connecticut, Delaware, Massachusetts, Nebraska, New Mexico and Rhode Island. Some states extend Ban the Box to private employers, while in others the law only applies to government agencies.

Most recently, New Jersey enacted the Opportunity to Compete Act on August 11, 2014, which will become effective in March 2015. The law applies to businesses with 15 or more employees, and places restrictions on when employers can ask about job applicants’ criminal records, such as on job applications and during an initial interview. Employers that violate the law are subject to civil penalties.

Various versions of Ban the Box legislation were unsuccessfully introduced in 2013 and 2014 in ten other states, including Florida, Georgia, Louisiana, Michigan, New



Hampshire, North Carolina, Ohio, South Carolina, Virginia and Washington.

Cities that have enacted Ban the Box policies include Philadelphia, Baltimore, Seattle, Memphis, Cleveland, New York City, Minneapolis, Detroit, Boston, Chicago, New Orleans, Tampa, Newark, Portland and most recently Washington, D.C. in September 2014.

Advocates believe the Ban the Box movement can also prompt private companies to change their hiring practices with respect to ex-offenders. As examples they point to the nation's largest retailer, Wal-Mart, which removed questions about criminal history from initial job applications in 2010, and Minneapolis-based retailer Target, which adopted a Ban the Box policy effective January 2014.

"Target is finally doing the right thing by reforming its hiring policies so that qualified job applicants aren't automatically screened out simply because they have an arrest or conviction from the past," said NELP executive director Christine Owens. "Other large retailers around the nation need to follow suit, because their hiring policies send a strong message about whether they are committed to the communities that support their business."

According to the *Star Tribune*, Greta Bergstrom, communications director for TakeAction Minnesota, noted that Target had changed its hiring policy following "a 200-person public action in the lobby of Target's headquarters, a hundred individuals with past records filing job applications at Target and being rejected, a visit to Target's shareholder meeting and numerous meetings, e-mails and phone calls with Target executives."

"That's why they decided to make this change," she said.

Groups that advocate for former prisoners believe that eliminating questions about criminal records – or pushing background checks until later in the hiring process – are essential to helping people released from prisons and jails succeed in reintegrating into society, thereby reducing recidivism rates. Little research exists as to the results of implementing Ban the Box policies, though there are anecdotal examples of the positive effects.

"There are many employers who knowingly will not hire someone with a criminal record," noted Walter Boyd, executive director of St. Leonard's Ministries in Chicago, a re-entry program that provides released prisoners with

free counseling, food, housing and classes.

Victor Gaskins, St. Leonard's program director, agreed. "You fill out that application, you get that box, and if you check it: 'Yes, I've been arrested, or incarcerated,' the person doing the hiring for the job, as soon as he sees that check, he throws [your application] in the garbage."

Advocates acknowledge that extending Ban the Box to other states and cities will take time, and caution against expecting too much too soon. "Our work isn't a sprint, it's a long haul fight," Dorsey Nunn admitted. "Limiting access to jobs and housing not only victimizes formerly incarcerated people, but also generations and generations of children and grandchildren. We don't have the luxury of stopping."

Currently, there are efforts to get the federal government to Ban the Box on initial job applications for federal employment; the U.S. government has around 2.7 million employees, excluding the military – about 2% of the nation's workforce. President Obama has the authority to change federal hiring policies through an executive order.

PLN has previously reported on guidance issued to employers in 2012 by the Equal

Employment Opportunity Commission in regard to job applicants with criminal records and criminal background checks. [See: *PLN*, Feb. 2014, p.40; June 2012, p.20].

In formal comments submitted to the EEOC, Prison Legal News wrote it is important to "remove barriers to reentry for ex-offenders, including barriers to employment... [to ensure] that former prisoners do not face discrimination in the job market due solely to the fact of their criminal record alone when that record has no relationship to or bearing on the job position they are seeking."

Not everyone is in favor of Ban the Box policies, though. "A blanket ban-the-box policy doesn't make good business sense for small business," stated Elizabeth Milito with the National Federation of Independent Business, while Chambers of Commerce in some states have expressed concerns about liability risks for businesses that hire former prisoners. ■

Sources: *Sacramento Bee*, [www.bloomberg.com](http://www.bloomberg.com), [www.cctv-america.com](http://www.cctv-america.com), [www.cleveland.com](http://www.cleveland.com), [www.prisonerswithchildren.org](http://www.prisonerswithchildren.org), *Daily Journal San Francisco*, [www.nelp.org](http://www.nelp.org), *The New York Times*, *Star Tribune*, [www.perustates.org](http://www.perustates.org), *Wall Street Journal*

## WELCOME TO KRASNYA BABES & KRASNYA STUDS WORLD

TENS OF THOUSANDS OF THE HOTTEST AND MOST SCANDALOUS BABES & DUDES FOUND ON THE PLANET. EACH CATALOG PAGE HAS 120 BEAUTIFUL GIRLS OR BOYS POSING JUST FOR YOU! ORDER ONE CATALOG PAGE FOR ONLY \$4.50 OR FOR 10 U.S. FOREVER STAMPS WITH AN SASE ENCLOSED. WE WILL SEND YOU VOLUME ONE. EACH ADDITIONAL VOLUME THE SAME PRICE! WE ARE MORE THAN HAPPY TO ANSWER E-MAIL INQUIRES HOWEVER, DUE TO MAILING COST AT \$0.49 CENTS A LETTER, PLEASE ENCLOSE AN SASE WITH YOUR QUESTIONS, OTHERWISE NO REPLIES!

### WHAT ABOUT OUR PRICES AND POLICIES

COLOR PRINTS ON 4x6 GLOSSY PHOTO PAPER AS LOW AS \$0.35 CENTS PER PRINT ON ORDERS OVER 500 SHIPPED ACCORDING TO POLICY:

25 PICTURES PER ENVELOPE EVERY 24 HOURS. S&H \$2.00 PER ENVELOPE.

\*\*\*\*\*METHOD OF PAYMENT\*\*\*\*\*  
U.S. POSTAL SERVICE MONEY ORDERS-STATE & FEDERAL CORRECTIONAL INSTITUTIONAL CHECKS PAYABLE ONLY TO: KRASNYA L.L.C.

OUR SEASONAL SPECIALS MEAN A KICKOFF OF SAVINGS!

**\$24.95 S&H FREE**  
FOR GRAB BAG OF 50 PHOTOS  
FROM ALL OUR CATALOGS  
SPECIFY RACE AND MAIN  
AREA OF YOUR INTERESTS  
WE WILL PICK SELECTION FOR YOU  
BONUS 1 COLOR CATALOG PAGE OF  
120 BABES (NUDE OR BOP-FRIENDLY)

3 BRAND NEW FLAT BOOKS OF  
20 U.S. FOREVER STAMPS  
FOR GRAB BAG OF 45 PHOTOS  
FROM ALL OUR CATALOGS, SPECIFY RACE  
AND MAIN AREA OF YOUR INTERESTS  
WE WILL PICK SELECTION FOR YOU  
BONUS 1 COLOR CATALOG PAGE OF 120 -  
(BABES OR STUDS-NUDE OR BOP-FRIENDLY)  
PLEASE INCLUDE 6 FOREVER STAMPS  
WITH YOUR ORDER FOR S&H

KRASNYA BABES HAS SPRUNG SALE!  
FREE SAMPLE CATALOG FROM KRASNYA!  
120 BABES IN EACH CATALOG  
ENCLOSE ONE SASE WITH TWO FIRST CLASS  
STAMPS! 1 CATALOG PER CUSTOMER  
PLEASE SPECIFY MALE OR FEMALE BABES  
NUDE OR BOP-FRIENDLY

FOR KRASNYA CLIENTS WHO WORK THE YARDS;  
HAVE WE GOT A GREAT OPPORTUNITY FOR YOU...

MR. HUSTLE GRAB BAG BARGAIN DAYS  
ONLY \$0.25 CENTS PER BABE/PRINT  
5 GRAB BAG MINIMUM PURCHASE REQUIRED  
\$2.00 SHIPPING AND HANDLING PER BAG  
25 AWESOME BABES PER BAG AT ONLY \$6.25  
YOU MUST BUY AT LEAST 5 GRAB BAGS  
THIS "GRAB BAG BARGAIN" IS NOT GOING TO  
BE OFFERED AGAIN THIS YEAR.  
SO STOCK UP NOW!

AS YOU KNOW YOU GET AN ARRAY OF  
25 GORGEOUS BABES  
YOU CAN ONLY CHOOSE EITHER MALES OR  
FEMALES. ALL NUDES OR BOP SAFE  
YOU MAY WANT TO SIT DOWN  
FOR THIS BONUS BARGAIN!  
OUR BABES CATALOGS SPECIAL OF THE DECADE  
— 5 COLOR CATALOGS FOR \$6.00 —  
— 10 COLOR CATALOGS FOR \$12.00 —  
— 15 COLOR CATALOGS FOR \$18.00 —  
— 20 COLOR CATALOGS FOR \$24.00 —  
OUR CATALOGS SPECIAL AVAILABLE WHEN YOU  
PURCHASE THE 5 GRAB BAG MINIMUM!  
THIS PRICE INCLUDES FREE SHIPPING ON THE  
CATALOGS BECAUSE OF SHIPPING TERMS ALL  
CATALOGS SOLD IN MULTIPLES  
OF 5 FOR \$6.00 ONLY.  
YOU CHOOSE EITHER MALE OR FEMALE CATA-  
LOGS AND IF YOU WANT NUDE OR BOP SAFE!!

KRASNYA L.L.C. P.O. BOX 32082, BALTIMORE, MD 21282

EMAIL & CORRLINKS REQUESTS ACCEPTED AT:

KRASNYABABES@HOTMAIL.COM

# Pennsylvania Activists Arrested for Protesting Construction of New Prison Complex

**S**EVERN MEMBERS OF DECARCERATE PA, a grassroots coalition working to end mass incarceration in Pennsylvania, were arrested while protesting the construction of a new two-prison complex in that state. The protest was to highlight the \$400 million cost to build the facilities, which could be better spent on schools.

To make that point, the protestors set up 10 school-style desks with apples and notebooks across the entrance to the construction site for the prisons, which is on the grounds of SCI Graterford. They also set up a mock schoolhouse in what they said was the “first-ever act of civil disobedience to block prison construction in Pennsylvania.”

The November 19, 2012 protest began at 6:40 AM. It was short-lived, as the protestors were arrested about an hour later after they ignored orders by the State Police to disperse. They were charged with defiant trespass, failure of disorderly persons to disperse upon official order and persistent disorderly conduct. Following arraignment, they were released on bail.

The seven protestors, all from Philadelphia, were Layne Mullett, 27; Jenna Peters-Golden, 27; Leana Cabral, 29; Erica Slaymaker, 23; Sean Damon, 35; David Fisher, 41; and Robin Markle, 26. Other protestors at the event were not arrested.

“Prisons do not make our communities safer,” said Cabral. “Prisons break up families and ruin people’s lives. Education, employment, housing and health care make communities safer, yet our governor prioritizes the construction of new prisons over these basic rights. I took part in this action because I believe powerful things happen when people come together and organize.”

It was hoped the protest would bring public attention to the \$400 million being spent to build the new prison complex, designated SCI Phoenix I and II, which will house approximately 4,100 prisoners and is expected to open in 2015.

The new prisons represent “an expansion of mass incarceration in Pennsylvania and a continuation of policies that lock people up instead of giving our communities the resources they need to thrive,” Decarcerate PA wrote in a statement. “The


money used to build these prisons is money that is being stolen from our schools, our healthcare, reentry programs, social services, and the environment.”

“I believe that it will take more such actions by all those who understand that building more prisons is not the solution to addressing the issues in our communities and this society,” said Hakim Ali, with Decarcerate PA and Reconstruction, Inc. “We will need everyone to stand up against oppression and let our voices be heard.”

According to a December 5, 2013 article in the *Philadelphia City Paper*, the state’s projected cost savings from opening SCI Phoenix and closing SCI Graterford were based on “an analysis, purportedly using data from 2007, that is superficial, unclearly

sourced and woefully out of date.”

“They’re definitely misleading people about the costs of this prison expansion,” stated Decarcerate PA member Owen Lyman-Schmidt. “We have to ask: If they’re not building these prisons to save us money, as they claim, why are they building them?”

A Decarcerate PA spokesperson told *Prison Legal News* that the seven protestors who were arrested have not yet gone to trial or accepted plea bargains. They are represented by attorneys Michael Lee and Leo Mulvihill. 

Sources: *Norristown Patch*, *Journal Register*, *Philadelphia Inquirer*, *The Times Herald*, [www.decarceratepa.info](http://www.decarceratepa.info), [www.nbcphiladelphia.com](http://www.nbcphiladelphia.com), [www.citypaper.net](http://www.citypaper.net)

## New Mexico Guard Sues Over Termination for Medical Marijuana Use

**A** FORMER NEW MEXICO JAIL GUARD and veteran of the Iraq war is suing the county where he was employed after being fired for a positive drug test, even though he had a prescription to use medical marijuana to treat his Post Traumatic Stress Disorder (PTSD).

Augustine Stanley, 32, was terminated from his job as a lieutenant at the Metropolitan Detention Center (MDC) in Albuquerque after testing positive for marijuana in 2013. But his lawyer, who is representing him in a federal lawsuit against Bernalillo County, said he was prescribed medical marijuana for PTSD and has a legal medical marijuana card.

“It’s demonstrative of a lot of people’s cases,” said Stanley’s attorney, Paul Livingston. “And a lot of people work for the state or the county or the city and need to have or want to have a medical marijuana card.”

Jail officials claimed it was a violation of MDC’s anti-drug policy for an employee to use marijuana. They added that Stanley did not report any prescription medication prior to the drug test as required by policy.

However, Livingston said Stanley did not have to report his medical marijuana prescription because New Mexico state law

recognizes the medical use of marijuana and protects the privacy of medical marijuana card holders.

“They guarantee him confidentiality, and what’s ironic is then they give him a test that’s designed to break that confidentiality to show that he is using marijuana and therefore can be fired, and that’s what’s wrong with this,” Livingston said.

MDC officials argued that any drug use is inappropriate due to the safety sensitive environment at the jail. Guards need to be “100% aware” because life and death situations could happen very quickly, noted then-MDC Chief Ramon Rustin.

In response, Livingston contended that simply using medical marijuana does not automatically mean the user’s judgment or abilities are impaired.

“They’re not impaired in any way, the only thing that impairs them is the drug test that says they’re impaired and the conclusion or the presumption that the government makes, which is that if you test positive for marijuana you must be impaired,” he said.

In Stanley’s termination letter, a jail official wrote that his “actions and conduct were inappropriate, unprofessional and inconsistent with your obligations as a

Bernalillo County employee.”

MDC spokeswoman Nataura Powdrell insisted that Stanley was fired because he did not notify his supervisor about his use of a controlled substance, not due to the medical marijuana itself. “He’s a lieutenant, and he understands the policy and should have informed his supervisor,” she said.

The jail’s policy states that “No employee shall ingest any controlled substance unless prescribed directly to them. When taking any prescribed medication ... [an] employee must notify their immediate supervisor when taking any prescribed medication that may impair their ability to perform the essential functions of their job or may cause the employee to be inattentive or drowsy.”

Stanley countered that his work performance was not impaired because he smokes medical marijuana off duty and before bed; thus, he was not obligated to inform his supervisor what he was doing on his own time.

The case raises serious questions for other prison and jail guards, as well as police officers, fire fighters and federal, state, county and city employees who are autho-

rized to use medical marijuana but must also undergo random drug testing.

“It seems that it is not appropriate under state law because the State of New Mexico has recognized the right of patients to use medical cannabis for various reasons, in consultation with their doctor and under their doctor’s supervision,” said attorney John McCall, who helped write New Mexico’s medical marijuana statute. “People are going to have to consult with lawyers, unfortunately.”

Stanley began working as a guard at MDC in 1999 and, after serving in the military, was promoted to sergeant in 2006 and then to lieutenant. He was a member of the jail’s Corrections Emergency Response and Tactical Team, and said his record at the facility was unblemished.

“I served my country, and I served my

county,” Stanley stated. “But it feels like that meant nothing. It feels wrong.”

His federal lawsuit, filed on June 13, 2014, remains pending. See: *Stanley v. County of Bernalillo*, U.S.D.C. (D. N.M.), Case No. 1:14-cv-00550-JB-KBM. ■

Sources: [www.kob.com](http://www.kob.com), [www.krqe.com](http://www.krqe.com), [www.abqjournal.com](http://www.abqjournal.com)

### Actual Innocence

Explains how the innocent are convicted by faulty eyewitness testimonies, police perjury, expert witnesses, prosecutorial misconduct, etc., and how DNA testing is used to free the innocent.

\$17.99 from PLN’s Book Store!

See page 61 for more information.

# got pen pals?

get some

**PRISON INMATES ONLINE** #PLN AD

Send SASE to: 8033 W Sunset Blvd #7000  
Los Angeles CA 90046

for free brochure.

## Stamps for CASH!

*Great Goods will buy your stamps!*

**70%** of Face Value: Complete books, sheets or rolls of Forever Stamps and Global Forever Stamps

**65%** of Face Value: Complete books, sheets or rolls of 49-cent stamps

**60%** of Face Value: Complete books or sheets of high denomination stamps (higher than 49-cent)

**Payment sent within 24 hours of receipt.**

**W**E WILL SEND your funds as a money order, electronic payment to anywhere you designate. Great Goods can also send payment to an approved package vendor. Please provide complete name and address of where to send your funds. Also include any required forms or special instructions.

Minimum money order of \$20. • No quantity of stamps too big. • No taped or stapled stamps. • Used, damaged, torn stamps not accepted and cannot be returned. • Stamps **MUST** be on original postal backing. • Only new stamps accepted.

• No singles or partials will be accepted and they cannot be returned.

## GREAT GOODS

PO Box 2027, Bloomington IN 47402

[greatgoods2027@gmail.com](mailto:greatgoods2027@gmail.com)

STAMPS © USPS. ALL RIGHTS RESERVED.

# Fifth Circuit Declares SORNA Unconstitutional in Certain Cases, Reversed by Supreme Court

by Matt Clarke

THE FULL FIFTH CIRCUIT COURT OF Appeals held in July 2012 that Congress did not have the power to enact criminal penalties for failing to register as a sex offender following an intrastate move, as applied to a defendant who had been unconditionally released from a federal prison sentence and military service prior to the enactment of the registration law. Thus, the Court declared the Sex Offender Registration and Notification Act (SORNA) and accompanying statutes and rules, 42 U.S.C. § 16913, 18 U.S.C. § 2250(a) and 28 C.F.R. § 72.3, unconstitutional under those narrow circumstances. The Supreme Court disagreed, however, and reversed the appellate ruling.

In 1999, Anthony James Kebodeaux, 21, was in the military when he was convicted of having sex with a fifteen-year-old girl and sentenced to three months in prison. After serving his sentence, he was no longer in the military; his release from both prison and military service was unconditional.

SORNA requires all federal sex offenders to register with state registration authorities within three days of moving. Texas law requires registration within seven days of moving. When Kebodeaux failed to register his move from San Antonio to El Paso within three days, he was charged, convicted and sentenced to 366 days in federal prison. He appealed.

A panel of the Fifth Circuit upheld his conviction but the *en banc* court reversed, finding that application of SORNA under those circumstances exceeded Congress' authority. The appellate court held that, "[a]bsent some jurisdictional hook not present here, Congress has no Article I power to require a former federal sex offender to register an intrastate change of address after he has served his sentence and has already been unconditionally released from prison."

In a lengthy opinion, the Fifth Circuit held that SORNA, as applied in this case, did not "rationally relate" or "reasonably adapt" to one of the powers of Congress set forth in the Constitution. The application of SORNA was novel and did not reasonably extend well-established laws; it also did not

properly account for state interests and was too sweeping, or at least too broad.

Noting that "[t]he Department of Justice cannot find a single authority, from more than two hundred years of precedent, for the proposition that it can reassert jurisdiction over someone it had long ago unconditionally released from custody just because he once committed a federal crime," the Court of Appeals held that Congress had no power to do so under the Necessary and Proper Clause of Article I of the Constitution.

Congress also lacked authority under the Commerce Clause, as an intrastate move by a federal sex offender did not affect interstate commerce. The panel opinion had held that a sex offender might drop off the radar by making an intrastate move prior to making an interstate move, but the Fifth Circuit noted that if the reasoning of the panel was adopted, "it would confer on the federal government plenary power to regulate all criminal activity," including those areas traditionally reserved to the states.

"Neither this court nor the Supreme

Court, however, has ever extended Congress's 'police power' over those who use the channels of interstate commerce to punish those who are not presently using them, but might do so," the Court of Appeals wrote.

Therefore, the appellate court reversed Kebodeaux's conviction and ordered the dismissal of the charges against him, with the decision based in part on the fact that he had been released from federal prison prior to SORNA's enactment. See: *United States v. Kebodeaux*, 687 F.3d 232 (5th Cir. 2012).

The U.S. Supreme Court granted certiorari, then reversed the Fifth Circuit's ruling in a split decision in June 2013. The Court held "that the SORNA changes as applied to Kebodeaux fall within the scope [of] Congress' authority under the Military Regulation and Necessary and Proper Clauses," and remanded the case. Accordingly, after remand, the Court of Appeals affirmed Kebodeaux's conviction on August 13, 2013. See: *United States v. Kebodeaux*, 133 S.Ct. 2496 (2013). ■

## California Prison Healthcare Costs Soar Under Federal Receiver

CREATING A BALANCE BETWEEN adequate healthcare for prisoners at a reasonable and affordable cost for taxpayers is at the heart of a debate being argued in legislative offices and behind prison walls in California.

The federal receiver appointed to overhaul the state's prison healthcare says he has worked hard to reform a dysfunctional system that – at its worst in 2005 – claimed the life of one prisoner per week due to negligence, malfeasance or inadequate and substandard medical care. [See: *PLN*, March 2006, p.1].

State officials counter that the reforms have produced a "Cadillac" level of care that has caused medical costs to skyrocket, nearly doubling over the past decade. Statistics indicate, for example, that partly as a result of healthcare costs, California now spends more per year housing a state prisoner than it does

to educate a child in public school.

When a federal district court assumed oversight of the state's prison healthcare system and appointed a receiver in 2006 – initially Robert Sillen, who was replaced by J. Clark Kelso in 2008 – the court gave the receiver's office the authority to hire medical staff and set their pay levels. [See: *PLN*, July 2008, p.30]. Immediately after being appointed, the receiver set out to bring medical care in California prisons up to constitutional standards.

To cure the prison system's many problems, the receiver's office, known as California Correctional Health Care Services, hired hundreds of employees to fill longtime vacancies, increased salaries and created new positions at higher pay rates. The number of medical, mental health and dental workers in state prisons increased from 5,100 in 2005 to



12,200 in 2011.

"The problem that we had is that the receiver was not accountable to anybody," complained former state Senator George Runner. "So the receiver could just do or choose to spend whatever amount of money he thought was necessary to solve his problem, and unfortunately, now the state is stuck with that."

Runner neglected to mention that it was the state's decades-long failure to address problems related to deficient prison medical care, largely due to a lack of political will by the legislature in which he served, that led to the *Plata* and *Coleman* class-action lawsuits which in turn resulted in the appointment of the receiver and a federal court order to substantially reduce the state's prison population. [See: *PLN*, July 2011, p.1].

California spent \$1.1 billion in fiscal year 2003-04 to provide medical care to the state prison population, which peaked at around 160,000. Under California's realignment initiative, which went into effect in 2011, the number of in-state prisoners has fallen to approximately 127,200. Yet the projected cost of prison healthcare in fiscal year 2013-14 was expected to top \$2 billion – an 82.3% increase compared to a decade ago after adjusting for inflation.

In contrast, spending for each public school student in the state grew just 17.9% during the same time period.

"We incarcerate people in California at a rate higher than any other society in the world, including Russia and Iran," noted Michael Bien, an attorney who rep-

resents prisoners in the still-pending *Plata* and *Coleman* cases. "One of the things we have to pay for is healthcare. Doctors and nurses only [work] in these places if you pay them."

A survey of salaries for prison physicians found that only Texas has a base salary higher than California's. An analysis of 2011 California payroll data by the Associated Press indicated that of the top 100 highest-paid state employees outside the University of California system, 44 worked in state prisons.

The highest paid prison medical employees in 2013 included staff psychiatrist Rajababu Kurre, who earned \$509,000; Hung V. Do, a chief physician and surgeon, who made \$439,000; and physician and surgeon Dev Khatri, who received \$431,000.

Since 2005, the average cost of prison healthcare in California has soared from \$7,747 per prisoner annually to more than \$18,000. Governor Jerry Brown has criticized Kelso's efforts to improve medical care in the state's prison system, calling it "Cadillac care." Kelso countered that prisons only provide "minimally necessary medical care." Of course, most prisoners would also likely dispute the notion that they receive Cadillac medical treatment; rather, it is more of a Chevy Cavalier level of care.


Kelso also

pointed out that the state had failed to act in the wake of the expiration of a court order that increased prison healthcare workers' salaries. At that point, the state was free to collectively bargain with the union representing the employees.

Joyce Hayhoe, a spokeswoman for the receiver's office, added that contract medical service costs have dropped over the past several years and are now less than when the receiver was appointed. The state has reduced by half the cost of outside medical care at hospitals by having prison doctors provide more treatment, which also reduces transportation costs and the expense of having guards watch prisoners while they are hospitalized.

Although prison medical costs remain high, that is part of the cost of mass incarceration. When public officials enact laws and policies that put more people in prison for longer periods of time, higher costs – including medical expenses – are a predictable result. ■

Sources: *Associated Press*, [www.monterey-countyweekly.com](http://www.monterey-countyweekly.com), <http://californiabudgetbites.org>, [www.sacbee.com](http://www.sacbee.com)



## STAND UP FOR YOUR PEOPLE

A book about Native American religious rights  
in prison. Non-fiction, 300 pg. E-book \$4.25

Order Today  
**Only \$14.95**  
3.99 s/h  
SOFT COVER

Midnight Express Books  
Box 69, Berryville, AR 72616  
[www.MidnightExpressBooks.com](http://www.MidnightExpressBooks.com)  
<http://standup4yourpeople.wordpress.com>

### NEW FRIENDS, HIGHER EDUCATION, AND EMPLOYMENT & HOUSING UPON RELEASE THROUGH WRITEAPRISONER.COM PROFILES

**Contact WriteAPrisoner.com &  
Start Looking Forward  
To Mail Call!**

AS SEEN ON

CNN, 20/20, Fox News,  
Dr. Phil, O Magazine,  
E! True Hollywood,  
and hundreds more!

**WriteAPrisoner.com...**

Simply the largest, highest ranked, &  
most visited website of its kind!\*

- Pen-pal Profiles are affordably priced at \$40 for the first year, \$30 for renewing year
- Features a comprehensive search that allows viewers to find your profile by age, race, location, keywords, & more - 32 search options in all
- Your new friends can email their first message to you along with a photo
- Advertises non-stop on every major search engine with thousands of websites linking back to us
- Offers free Reintegration Profiles for inmates seeking employment and housing upon release and education during incarceration
- Translated into 51 languages & geared for international search engines
- Viewers can "subscribe" to your profile to be notified when your profile is updated, blog is added, artwork is posted, poetry is added, your release is near & much more
- Pen-pals have the option of helping you with a broad range of topics using WriteAPrisoner.com's free Self-Help Series


  
**WriteAPrisoner.com**  
We'll see you at mail call!

**Get Started Today!**

Friends & family can submit your  
entire 250 word profile, photo, and  
payment for you online by visiting

[www.writeaprisoner.com/post](http://www.writeaprisoner.com/post)

Or for a FREE Brochure, Send a  
S.A.S.E. to:

  
**WriteAPrisoner.com**  
PO Box 10- PLN  
Edgewater, FL 32132 USA



Proud member of the Better Business Bureau of Central Florida & the Southeast Volusia Chamber of Commerce.  
\*Our website traffic can be independently verified at [www.quantcast.com/writeaprisoner.com](http://www.quantcast.com/writeaprisoner.com)



## Probe Reveals Corruption at Pennsylvania Jail

**A** FORMER GUARD AT PENNSYLVANIA'S Erie County Prison and his supervisor, who is also his wife, were accepted into a special diversion program for first-time offenders after being charged in connection with payroll tampering and missing ammunition. Another guard was demoted following an investigation into misconduct at the facility.

Sgt. Daniel S. Danowski, 41, and his supervisor and wife, Capt. Leslie L. Danowski, 40, were fired in October 2012 after being charged in a scheme that netted Daniel Danowski nearly \$3,500 in pay he did not earn.

Jim Senyo, the deputy warden of safety and security at the Erie County Prison, was demoted and suspended without pay for five days for his involvement in a separate scheme in which Daniel Danowski sold over 400 rounds of prison ammunition to a former guard. Senyo's duties as deputy warden included overseeing the facility's armory, where the ammunition was stored.

The investigation uncovered a conspiracy between the Danowskis to falsify time-keeping records at the prison, resulting in \$3,428 in payments to Daniel Danowski for work he never performed between February and July 2012.

Erie police charged Daniel Danowski with misdemeanor charges of theft by unlawful taking, receiving stolen property and criminal conspiracy to tamper with public records or information. Leslie Danowski was charged with one count of conspiracy to tamper with public records or information; she did not face charges related to the sale of the ammunition.

At a July 16, 2013 hearing, Erie County Judge Stephanie A. Domitrovich accepted the Danowskis' request to be placed in an Accelerated Rehabilitative Disposition program, which is reserved for non-violent, first-time offenders. If they successfully complete the program they can apply to have their records expunged; acceptance into the program did not require pleading guilty to the charges.

The investigation into misconduct at the prison also revealed that Leslie Danowski had signed off on the improper use of compensatory time for Capt. Jason Beasom.

Beasom "was paid as if he was at work, but he wasn't there," said Sue Ellen

Pasquale, the county's accounting manager. He was ordered to repay the time, which amounted to \$3,811, and also suspended – the seventh suspension at the prison since January 2012.

Erie County Chief Executive Barry Grossman promised reforms. "My administration will not tolerate the misconduct of a few individuals," he said. "It is unfortunate that the behavior of a few overshadows the hard work and dedication of so many of our dedicated prison employees."

Former deputy warden Al Copeland, a "highly respected" 32-year veteran at the facility, was named to fill Senyo's position pending a merit selection committee's decision on a permanent replacement.

The committee may also conduct an

independent review of the prison's operations. One proposal under consideration was to create the position of inventory coordinator, whose duties would include keeping track of ammunition, county-issued prisoner clothing and other supplies. The position would have an annual salary of \$40,584.

However, Erie County Controller Mary Schaaf, who was involved in the payroll tampering and missing ammunition investigations, opposed the idea as a waste of taxpayer money. "What we really need are honest employees doing their jobs," she said. ■

Sources: *Erie Times-News*, [www.goerie.com](http://www.goerie.com), [www.contracostatimes.com](http://www.contracostatimes.com)

## Nebraska DOC Obstructing Efforts to Modify Prisoners' Child Support Payments

**E**XCESSIVE ENFORCEMENT OF CHILD support obligations is not only detrimental to incarcerated parents, according to advocates in Nebraska, but also risks increasing recidivism and hindering familial relationships.

Legal Aid of Nebraska, led by managing attorney Muirne Heaney, has attempted to help prisoners modify their child support payments by offering forms and clinics on how to navigate that process. But the state's Department of Correctional Services has obstructed those efforts by prohibiting prisoners from receiving the forms provided by Heaney, saying they haven't been approved by a state attorney.

"Nobody is advocating [incarcerated parents] should be freed of their responsibility," Heaney said. "What I am advocating is that we make [child support] a collectable judgment."

At the end of 2011, Nebraska prisoners – over 4,000 men and women – owed back child support and interest of about \$86 million; close to 700 had monthly child support obligations of at least \$400. Many had owed back child support before they were incarcerated.

The debts are despite the enactment of a 2007 state law that made imprisonment an involuntary, rather than voluntary, circumstance with respect to child support payments once a prisoner has been incarcer-

ated at least six months. As a result of that law, prisoners are able to apply for modification of their child support obligations while incarcerated.

Mel Beckman, editor of the *Nebraska Criminal Justice Review*, said he doubted that state prison officials are informing prisoners they can seek modifications, which is why Heaney offered to provide the forms and conduct the clinics.

Heaney noted that reentry is made more difficult when ex-offenders have high child support debts upon release. When and if they find jobs, they're usually low-paying positions – not including garnishment for monthly child support payments and back payments.

"It seems counter-productive to me," Heaney observed.

Byron Van Patten, child support administrator for Nebraska's Department of Health and Human Services, said it's not the state's intent to leave prisoners and ex-offenders destitute. HHS supervisors visit prisons to answer questions before prisoners are released so they are aware of their child support responsibilities.

But Heaney argued that if the state makes it hard for ex-offenders to live due to high child support debts that accrued during their incarceration, they will be incentivized to make money in other ways – including through illegal activities.

She added that non-custodial parents

are sometimes ashamed of their inability to support their kids, so they simply stay away from them. As a result, those children are more likely to get into trouble, abuse drugs and alcohol, and drop out of school.

"I used to be a prosecutor," Heaney said. "I am not in favor of people committing

crimes. But I am in favor of practicality. And if we want these people to return to society, and be contributing members of society, it behooves us to not erect barriers to that."

The child support modification forms that Heaney produced are still not allowed in state prisons. Legal Aid of Nebraska,

which receives funding from Legal Services Corporation (LCS), a publicly-funded non-profit, cannot directly represent prisoners due to restrictions placed on LCS by Congress in 1996. ■

Source: *Omaha Journal-Star*

## New York District Attorney Admits Lying About Acting in Porn Movies

**A**N UPSTATE NEW YORK DISTRICT Attorney who lied when questioned during his re-election campaign about being an actor in pornographic movies during the 1970s will not quit, despite public calls for his resignation and at least one expert's view that he may have violated New York State Bar Association rules.

Democratic incumbent Mark D. Suben was re-elected in 2012 as district attorney for Cortland County, near Syracuse. During the campaign he was asked whether he had acted in adult films in the 1970s, and he denied having done so.

Suben accused his Republican opponent, Keith Dayton, of spreading false rumors in a smear campaign to discredit him.

However, WSTM-TV reported on November 17, 2012 that Suben had in fact acted in pornographic movies under his real name and the pseudonym Gus Thomas. An anonymous YouTube video compared images of Suben and Thomas, and presented other evidence.

Suben then decided to come clean.

"Recently, materials have circulated alleging that I was involved in the adult film industry about 40 years ago in New York. Those allegations are true," Suben admitted in a news conference ten days after the election. "I was an actor in adult films for a short period in the early '70s. I was also an actor in other venues including off-Broadway, soap operas, and commercial advertisements."

The post-election admission led to calls for Suben's resignation, and legal expert Jonathan Turley said an "act of dishonesty used to secure a legal position" may constitute misconduct under New York State Bar Association rules.

Suben's spokeswoman, Aimee Milks, said he would not resign. "I think the situation is really irrelevant to the campaign," she said. "His record as the DA for the last four years speaks for itself."

In November 2013 it was reported that

Keith Dayton's brother, Kevin, was the person who had uncovered Suben's porn acting past, contacted the media and posted the YouTube video. Kevin Dayton said he did not reveal Suben's past out of any allegiance to his brother, as they had been estranged for many years, nor did he have a vendetta against Suben.

"He's always seemed like a good guy to me," Kevin Dayton said. "Even now, I don't necessarily think he should've resigned." He indicated the issue was hearing a public official blatantly lie.

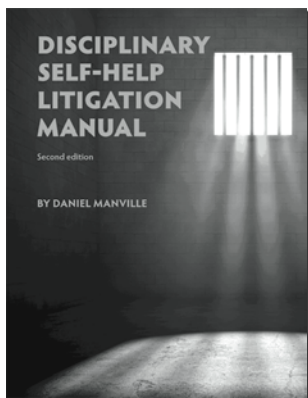
"It was like Ronald Reagan saying, 'I wasn't in Bedtime for Bonzo,'" Kevin noted. "It was annoying that someone would lie so

bluntly and run for public office."

Keith Dayton said he had no control over his brother's actions and, in any case, was unconcerned with Suben's participation in porn movies. "I think the more important part is the lying," he stated, adding he plans to run for DA again in 2016.

"It's ancient history to me," Suben said of the controversy over his appearance in adult films. "It's of no significance in my life. The issue is long since gone. It's a thing that's over, that's quite completely over as far as I can determine." ■

Sources: *Huffington Post*, *Syracuse Post-Standard*, [www.cnycentral.com](http://www.cnycentral.com)



### ***Disciplinary Self-Help Litigation Manual, Second Edition*, by Dan Manville**

By the co-author of the *Prisoners' Self-Help Litigation Manual*, this book provides detailed information about prisoners' rights in disciplinary hearings and how to enforce those rights in court.

Available in November 2014 from Prison Legal News Publishing. **\$49.95**, shipping included

#### **Order by mail, phone or on-line.**

By: ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**Prison Legal News • PO Box 1151, Lake Worth, FL 33460**

**Tel. 561-360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)**

# Investigation Uncovers Lost Graves at Former Florida Juvenile Facility

by David M. Reutter

**A**N ANTHROPOLOGICAL TEAM FROM THE University of South Florida investigating the grounds of the now-closed Florida Industrial School for Boys (FISB), a juvenile detention facility in Marianna, has identified the remains of three youths buried in a cemetery on the property and continues to exhume other bodies discovered at the site.

In all, the team found 55 graves – 24 of which were outside the boundaries of the marked cemetery – at the facility, which was formerly called the Arthur G. Dozier School for Boys. Researchers believe another cemetery for black youths is also located on the property.

The FISB came under scrutiny in 2008 after a group of men publicized stories about physical and sexual abuse they had endured while held at the facility as juveniles. They called themselves the “White House Boys,” after a small white building where the most serious abuses occurred. Some said they were made to lie down on a bed and severely beaten with leather straps by school officials. [See: *PLN*, March 2009, p.22].

“I came out of there in shock, and when they hit you, you went down a foot into the bed, and so hard, I couldn’t believe,” said Robert Straley, who was taken to the “White House” the first day he arrived at FISB in the 1960s. “I didn’t know what they were hitting you with.”

The White House Boys alleged that some juveniles at the facility who went missing were killed by staff members, and their bodies buried on the property.

Former Governor Charlie Crist ordered an investigation after the stories of abuse were made public. In 2009, the Florida Department of Law Enforcement (FDLE) issued a report that accounted for 31 graves with rusted metal crosses in a cemetery on the grounds of the facility. However, the report concluded that investigators could not substantiate or disprove the claims of abuse because too much time had passed.

Straley called the report a whitewash. “All they did was try to do their best to discredit us,” he said. “They focused on that instead of focusing on an investigation.”

The anthropological research team used ground-penetrating radar to find 31 graves in the marked cemetery plus an additional 24 graves during a four-month excavation in 2013. Some of the grave sites were under roads or in the woods, far from the cemetery.

“We found burials within the current marked cemetery, and then we found burials that extend beyond that,” said Dr. Erin Kimmerle. “These are children who came here and died, for one reason or another, and have just been lost in the woods.”

As for juveniles who reportedly went missing from the facility, “For the majority, there’s no record of what happened to them. So, they may be buried here, they may have been shipped to their families. But we don’t know,” stated Dr. Kimmerle, who is seeking approval from the Department of Juvenile Justice to locate another cemetery on the property containing the remains of black youths, which existed separately due to racial segregation at the time.

In August 2014, researchers announced that DNA and other tests were used to identify the first body exhumed from the facility’s cemetery as George Owen Smith, who was 14 when he disappeared from FISB in 1940. The tests did not reveal how he died.

School officials told Smith’s family that he had run away and died from pneumonia while hiding under a house. His family came to get his body.

“They said that the body was so decomposed, you wouldn’t be able to identify him.... they took him straight out to the school [cemetery],” said his sister, Ovell Smith Krell, 83. One of the other boys at FISB, however, had told the family a different story.

“He said, ‘My brother was running out across a field, an open field, and there were three men shooting at him with rifles,’” Ovell stated. “I believe to this day that they shot my brother that night, and I think they probably killed him and brought him back to the school to bury him.”

Ovell hopes to give her brother a proper burial. “I would take him and put him down with my mom and dad in their cemetery,” she said. “I hope I get that chance.” Families

of the boys buried at FISB must seek an exhumation order in state court to obtain their remains.

In September 2014, the university team announced the identities of two more bodies buried at the facility: Thomas Varnadoe, 13, and Earl Wilson, 12.

School officials had reported that Varnadoe died in 1934, allegedly from pneumonia, while Wilson was beaten to death in 1944 while confined in a small cottage on the property known as the “sweat box.” Four other boys were eventually convicted in Wilson’s death.

Thomas Varnadoe’s brother, Richard, was five years old when Thomas was sent to FISB for stealing a typewriter. Richard Varnadoe, now 85, provided researchers with the DNA that allowed them to identify his brother’s remains.

“We got the report that he died from pneumonia. We didn’t believe that in a minute,” he said. “It’s been really bad in a way and really good in a way. It’s almost unbelievable to go back 80 years,” Varnadoe added. “I’m elated.”

The FDLE’s 2009 report said many of the graves at the former juvenile facility contained victims of a 1914 fire, while other boys had died during a 1918 flu outbreak. The FDLE blamed poorly-kept school records for being unable to determine what happened to the other youths who died. The report concluded that two boys were killed by fellow students and another was shot by a deputy sheriff while trying to escape.

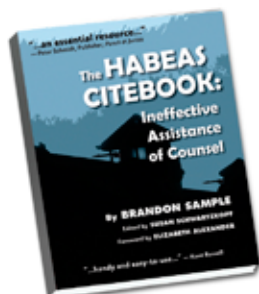
Five hundred boys were housed at FISB during its peak in the 1960s. Most had been sent to the facility for minor offenses such as running away from home, skipping school and petty theft.

In 1968, then-Florida Governor Claude R. Kirk, Jr. visited the facility. He discovered cramped sleeping quarters, buckets used as toilets, no heat in the winter, leaks in the ceilings and holes in the walls.

“If one of your kids were kept in such circumstances,” Kirk said at the time, “you’d be up there with rifles.” ■

Sources: *CNN*, <http://staugustine.com>, [www.wtsp.com](http://www.wtsp.com), *Associated Press*





## The Habeas Citebook: Ineffective Assistance of Counsel

**\$49.95**

Brandon Sample  
ISBN: 978-0-9819385-1-6  
Paperback, 224 pages

The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an invaluable resource that identifies hundreds of cases where the federal courts have granted habeas relief to prisoners whose attorneys provided ineffective assistance of counsel.

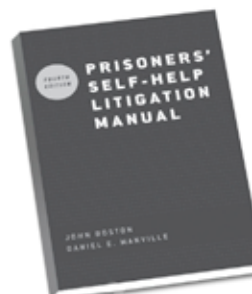


## Prisoners' Guerrilla Handbook to Correspondence Programs in the United States and Canada, 3rd Edition

**\$49.95**

Jon Marc Taylor  
ISBN: 978-0-9819385-0-9  
Paperback, 224 Pages

The greatly anticipated and newly updated third edition of the Prisoner's Guerrilla Handbook to Correspondence Programs in the United States and Canada has finally arrived! Author Jon Marc Taylor's brand new version is the latest in this unique and highly successful guidebook for the prisoner-student. This invaluable tool and how-to handbook provides the reader with step-by-step instructions to find the appropriate education program for correspondence high school, vocational, paralegal, undergraduate, and graduate courses offered in the U.S. and Canada today.



## Prisoners' Self-Help Litigation Manual, 4th Edition

**\$45.95**

John Boston & Dan Manville  
ISBN: 978-0-1953744-0-7  
Paperback, 960 pages

Prisoners' Self-Help Litigation Manual, in its much-anticipated fourth edition, is an indispensable guide for prisoner litigants and prisoner advocates seeking to understand the rights guaranteed to prisoners by law and how to protect those rights. Clear, comprehensive, practical advice provides prisoners with everything they need to know on conditions of confinement, civil liberties in prison, procedural due process, the legal system, how to actually litigate, conducting effective legal research, and writing legal documents. It is a roadmap on how to win lawsuits.

- ☐ Habeas Citebook,  
Ineffective Assistance of Counsel  
\$49.95
- ☐ Prisoners' Guerrilla Guide to  
Correspondence Programs  
3rd edition  
\$49.95
- ☐ Prisoners' Self-Help  
Litigation Manual  
4th edition  
\$45.95

**Shipping included in all prices**

**Order by mail, phone, or on-line.** Amount enclosed \_\_\_\_\_

By: ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

PUBLISHED BY

**PRISON LEGAL NEWS**  
Dedicated to Protecting Human Rights

PO Box 1151 • Lake Worth, FL 33460  
Tel 561-360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

## News in Brief

**Alaska:** On January 12, 2014, twenty-year-old detainee Jairus Nelson slipped under a garage door at the Dillingham jail and fled wearing nothing but his underwear. He ran into some nearby woods and later attempted to jump into several passing cars to evade officers. Unfortunately for Nelson, after several unsuccessful attempts to find a ride to freedom, he tried to enter the car of off-duty policeman Dan Decker. Decker recognized the escapee and held him until other officers arrived. Nelson was returned to the jail, given a new set of clothes and charged with felony escape.

**Arizona:** Anthony James Marotta resigned from his job as a guard at ASPC Perryville after he was allegedly caught receiving oral sex from a female prisoner in the back of a transport vehicle. Another prisoner was driving the vehicle when she witnessed the incident in the rearview mirror; she reported it to prison authorities, and Marotta was arrested on December 31, 2013. He admitted to the sex act and to an earlier incident of sexual misconduct.

**Arizona:** A prisoner being held on death row at the Eyman complex was found dead in his cell on January 27, 2014. According to the Pinal County Medical Examiner's Office, Gregory Dickens, 48, committed suicide. Dickens had been sentenced to death after he and an accomplice robbed and murdered a couple at a rest stop near Yuma in 1991.

**Australia:** Convicted drug dealer Dino Joseph Antonio Diano was mistakenly released on parole two years early and a warrant was issued for his arrest. He appealed the decision after being returned to prison, but on March 5, 2014 the Western Australia Court of Appeal ruled that his earliest release date was in May 2015. Prior to his drug conviction Diano had been a prominent businessman in Alice Springs, and hosted Prince Charles and Princess Diana at his home during their 1983 tour of Australia.

**California:** On January 24, 2014, a former Marine who operated a Pasadena youth boot camp was sentenced to four years and four months in state prison and will be required to register as a sex offender. Kelvin Bernard McFarland, 43, who preferred to be called "Sgt. Mac," pleaded no contest to multiple charges stemming from two cases of sexual assault involving

three 14-year-old girls. McFarland's offenses included sexual assault, kidnapping, extortion, child abuse, false imprisonment, unlawful use of a badge, sexual penetration by a foreign object, oral copulation of a person under 16, lewd act on a child and unlawful sexual intercourse.

**California:** Christina Marie Lugo, 31, a Fresno County Superior Court clerk, was arrested on December 31, 2013 and released on bond the same day for allegedly helping jail prisoner Ricky Modesto attempt to intimidate a witness in a 2012 assault case. After Modesto bonded out on felony battery charges, he failed to appear for a court hearing; a warrant was issued and he was subsequently arrested in November 2012. Fresno County sheriff's spokesman Chris Curtice said Lugo then tried to arrange communications between Modesto and three other co-conspirators, all gang members, to intimidate a witness. Lugo and two of the co-conspirators were charged with conspiracy to dissuade a victim and the third was charged with being a felon in possession of a firearm.

**Florida:** Reports from the Turner Guilford Knight Correctional Center described a brawl between two prison guards on January 13, 2014 that injured a female officer who attempted to break up the fight. The internal reports, obtained by Miami-Dade TV affiliate NBC 6, said a guard identified as "R.W." became angry when asked to replace an item on a prisoner's meal tray. He first pushed the female guard, then began to physically assault another male officer, "K.A." The reports further indicated that R.W. may have been under the influence of alcohol at the time of the incident.

**Florida:** In the aftermath of the jail-house beating of prisoner Jody Holland in May 2013, the former commander of the DeSoto County Jail was sentenced on February 10, 2014 to three years' probation and community service. Raymond Kuglar pleaded guilty to lying to an FBI agent in an attempt to cover up the attack. Four jail guards, Cpl. Steven Rizza and deputies Vincent Carlucci, Jonathan Mause and Ashley Cross, were fired for their roles in the beating and engaging in a conspiracy to conceal the incident. Mause and Cross face pending charges, while Carlucci has been convicted.

**Georgia:** Zel Tirrell Mitchell, 43, a former DeKalb County jail guard, was indicted on February 27, 2014 for having sexual contact with a prisoner in exchange for food and contraband. The prisoner stated he was not forced into the encounter. Mitchell had been fired following an internal investigation; he was charged with violation of oath and sexual assault by persons with supervisory or disciplinary authority. An additional charge of indecent exposure was dropped. [See: *PLN*, Oct. 2013, p.56].

**Greece:** On January 9, 2014, U.S. State Department spokeswoman Jen Psaki told reporters that the United States was concerned about the escape of Greek prisoner Christodoulos Xiros, 56, who was serving six life sentences for acting as a hitman for the revolutionary group known as November 17. "We call on the Greek government to locate Xiros and return him to prison," Psaki said. November 17 was responsible for the deaths of 23 people, including a CIA station chief, prior to disbanding in 2002; it is still included on the State Department's list of terrorist organizations. Xiros escaped while on an eight-day New Years furlough from prison. The furlough program is now under review.

**Idaho:** Seanjay Wright, 36, worked as an Ada County jail guard for two years before being arrested on January 1, 2014 on two felony counts of sexual contact with a prisoner. He was booked into the same jail where he was employed after an investigation by the Boise Police Department found evidence that he had sex with a female prisoner on two occasions. Ada County Sheriff Gary Raney said Wright had "violated the trust of the community and let down the other 650 men and women working for the Sheriff's Office who take great pride in their ethical conduct."

**Illinois:** On January 23, 2014, Sean McGilvery, a heroin dealer who catered to St. Clair County judges, was sentenced to 10 years in prison. One of his regular customers, former judge Michael Cook, was arrested last year in an investigation that included the cocaine-related death of a fellow judge at Cook's hunting cabin. Cook pleaded guilty to federal weapons and heroin charges. On March 28, 2014, a U.S. District Court rejected Cook's plea deal of 18 months in prison and instead

sentenced the disgraced judge to 24 months' incarceration.

**Indiana:** Prison officials dispatched to a security tower at the Miami Correctional Facility on December 23, 2013 found 56-year-old guard Zane E. Rasmussen dead of an apparent heart attack. Indiana DOC public information officer Ann Hubbard said it was believed that Rasmussen had nitroglycerin pills on hand, but was unable to reach them before he died. He was alone in the tower, and officials first suspected a problem when he failed to make an hourly welfare check call as required by prison policy.

**Kansas:** On January 22, 2014, Melinda Trusty, 47, pleaded no contest to having sex with a prisoner in a clinic restroom at the Lansing Correctional Facility. The former guard came under suspicion when prison officials noticed that prisoner Nathan M. Cunningham had been receiving letters that appeared to be written by an employee. In an interview, Trusty admitted to having sex with Cunningham, who had been assigned as a clinic worker. She was sentenced on March 19, 2014 to three years' probation.

**Libya:** Approximately 90 prisoners escaped from Mager Prison in southern Zliten on February 15, 2014. Prison guards are suspected of collusion in the escape, the latest in a series of jailbreaks over the past year in which at least 1,700 prisoners have absconded with a low rate of recapture. In July 2013, 1,200 prisoners broke out from Benghazi's Kuwaifiya Prison during a riot. Mass escapes have also occurred at the Bawabat Al-Jibs,

Ajdabiya and Sebha prisons.

**Louisiana:** On January 6, 2014, a deputy at the Tangipahoa Parish jail was arrested before he could carry out a plan to smuggle contraband into the facility. Patrick Collins, 58, admitted to bringing in the contraband with intent to sell it to prisoners, according to Sheriff Daniel Edwards. Packages containing tobacco and marijuana were found in Collins' work space. He was charged with a single count of malfeasance in office, two counts of introduction of contraband into a penal institution and possession of Schedule 1 narcotics with intent to distribute.

**Michigan:** Rather than face frigid temperatures outdoors, investigators with the MDOC Absconder Recovery Unit stayed behind their desks and focused on cold cases to pass the time. Their investigation led them to the whereabouts of 60-year-old Judy Lynn Hayman, who had walked away from the Detroit House of Corrections in April 1977 – 36 years earlier. On February 17, 2014, acting on a tip from Michigan authorities, police officers in San Diego, California were able to locate Hayman and take her into custody. The investigators' victory turned to embarrassment, however, when Hayman, who had legally changed her name to Jamie Lewis, produced court documents that proved her sentence had been suspended in 1982.

**Nebraska:** A 15-year-old jailed on an armed robbery charge attacked and strangled Scotts Bluff County Detention Center guard Amanda Baker, 24, on Febru-

ary 14, 2014, killing her. The juvenile, Dylan Cardeilhac, was charged as an adult with first-degree murder; however, prosecutors later amended the charge to first-degree murder during the commission of a robbery. The state alleges that Cardeilhac killed Baker as he was trying to steal her keys during an escape attempt. Baker's family has since filed a wrongful death claim against Scotts Bluff County. In May 2014, Cardeilhac was sentenced to 8 to 15 years on the original armed robbery charge.

**Nevada:** An elaborate scheme was uncovered at the Washoe County Jail that involved stolen identities and fraudulent commissary accounts. KOLO TV reported on February 4, 2014 that stolen credit card information was used by outsiders to place money on prisoners' accounts, then the funds were given to the prisoners upon their release. Detectives described the fraud as "using the jail as an ATM." As part of the scheme, at least two people were purposely arrested so they could cash out the stolen funds after leaving the jail.

**New Jersey:** On February 28, 2014, six pretrial detainees prevailed in a court action requiring the Middlesex County jail to provide computer equipment necessary to view evidence in their cases. Prisoners at the North Brunswick facility did not have access to CD, DVD or flash drive readers, and Superior Court Judge Bradley Ferencz ordered jail officials to "address the issue, kicking or screaming or not." "E-discovery is here," Ferencz told county counsel Benjamin Leibowitz, ruling that the jail had violated prisoners' constitutional



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription!

Quarterly drawing WINS \$100! (Void in New York)  
(Last Quarter's winner from Airway Heights, WA.)

**TELL YOUR FRIENDS! ACT NOW!!**



**PO Box 2063 • Fort Walton Beach FL. 32549**

**[www.InmateMagazineService.com](http://www.InmateMagazineService.com)**

## **Inmate Magazine Service**

## News In Brief (cont.)

rights by preventing them from viewing all the evidence against them. The detainees were represented by the public defender's office.

**New Mexico:** Albuquerque Metropolitan Detention Center guard Elijah Chavez was suspended with pay in February 2014 following the release of video footage that showed him repeatedly punching prisoner Mark Palacios. Chavez stated in a report that he felt he was in "survival mode" at the time of the assault. He was not charged with any crime, but Palacios, who was also pepper sprayed, was charged with battery on a peace officer. Bernalillo County Sheriff's Office representatives said it was likely that the deputy who charged Palacios with battery did not watch the video.

**New York:** A love triangle involving three New York jail guards ended in a bloody confrontation on a Queens street corner on January 10, 2014. Jeffrey Ragland died after being shot by his romantic rival, Oniel Linton. The shooting occurred when Linton saw Ragland violently strike the men's paramour, Salees Sales. Linton ran to the scene of the assault and knocked Ragland to the ground, then drew his

weapon and shot him twice. Linton claimed Ragland was in the process of pulling a gun on him when he opened fire. Ragland, who had recently retired from the New York City Department of Correction, was carrying a Glock 17. No charges were filed against Linton.

**Ohio:** On January 27, 2014, Cuyahoga County jail guard Tim Thomas was sentenced to six months in jail for accepting a bribe from a prisoner in the form of \$2,000 in cash and a used car valued at \$500. Thomas pleaded guilty to bribery and falsification for his role in delaying the transfer of a jail prisoner to state custody; he will serve his time in protective custody.

**Oklahoma:** A prisoner at the GEO Group-operated Lawton Correctional Facility made several calls to 911 on a contraband cell phone before being found unconscious on the floor of his cell. Christopher Glass, 33, was taken to a hospital where he was pronounced dead on January 30, 2014. Investigators said Glass' body had bruises and scrapes, but an autopsy report released on April 14, 2014 determined his death was caused by a methamphetamine overdose.

**Oregon:** On January 27, 2014, *The Oregonian* reported details of a prisoner's creative but unsuccessful plot to escape

from the Snake River Correctional Institution. Michael J. Norwood crafted a dummy using peanut butter and his own hair, then posed the makeshift mannequin in his bunk with headphones and reading glasses to conceal his absence from his cell. Norwood had also fashioned a rope from rolls of dental floss, which he intended to use to scale security fences; however, he was captured in a prison recreation yard after being missing for only half an hour.

**Philippines:** A mass jailbreak occurred at the Leyte provincial jail in the town of Palo on January 30, 2014. Nearly 200 prisoners escaped around dawn, but most were recaptured within hours. It was unclear how the mass break-out occurred, though it was very clear why: Prisoners told investigators they escaped due to hunger from limited food and squalid conditions at the facility. They also complained of slow prosecutions in their cases. Each year dozens of escapes occur in the Philippines due to the dilapidated condition of the prisons and lax security.

**Puerto Rico:** Former prison guard Bernis Gonzalez Miranda, 27, received a 67.5-year prison sentence on January 28, 2014 for his role in providing armed security for drug dealers; he was one of 89 law enforcement officers and 44 other

## PLN Classifieds

### Best 2014 Cite Book Available

Barkanresearch.com has "Colossal Book of Criminal Citations" just \$19.95. 2500+ cites & more. View sample content and order today!

### AMBLER DOCUMENT PROCESSING

Type, Design and Prepare Manuscripts for Self-Publishing  
Reasonable Rates! Accept all Genres!  
P.O. Box 938, Norwalk, CT 06852

### BB vo. 6 Naughty Celebs \$12.00

Full Color Cat, 1000 options  
Non-nude – Huge variety  
Celebs in the freakiest poses  
Send 30 stmps or \$12.00 MO  
To: On Demand Inmate Services  
PO BOX 81-PLN, Chelt, PA 19012  
US Female Pen pal list \$22 M/O

### The VOICES.CON Newsletter – Free

Written by lifers for lifers. For info on how to receive Voices.Con monthly, send SASE to: PO Box 361, King City, CA 93930.  
On the web at: [VoicesDotCon.org](http://VoicesDotCon.org);  
Email: [Publisher@VoicesDotCon.org](mailto:Publisher@VoicesDotCon.org)

### A DEGREE/ORDINATION FROM PRISON

Correspondence Courses via mail  
INT'L CHRISTIAN COLLEGE&SEMINARY  
PO BOX 530212, Debary, FL 32753-0212  
Associates thru PhD credit for  
Life Experience \*ACCREDITED\*  
Tuition as Low as \$19.95 a month  
Send SASE for a Free Evaluation

### FREE PULP-FICTION CATALOG

Send \$3.99 USD for S&H  
This is a 136-page catalog with  
1650+ story/novel entries  
Detective, Mystery, Air, Western  
Horror, Action, Science Fiction+  
Jaguar Books, 6881 Stanton Ave #F,  
Buena Park, CA 90621

### INMATE ALERT

FREE NON-NUDE SEXY PORN STARS  
AND MODELS CATALOG.  
SEND SASE TO:  
TOTAL ACCESS SERVICES, PO BOX  
31764, CAPITOL HEIGHTS, MD 20731

### IF YOU WANT THE BEST TRY EPS!

Legal Research & Forms, Internet  
& People Searches, Amazon Books,  
Erotic Photos & Stories, PenPals,  
Special Requests and Much More.  
Send SASE to: Elite Paralegal &  
Prisoner Services, PO Box 1717,  
Appleton, WI 54912

### You've tried the rest; now put us

to the test. Quicker turn around  
(no waiting 4 weeks for your  
order like with other services)  
lower prices. We are DFL Research  
Services, 2851 Chloe Drive,  
Converse, TX 78109  
Send for information today



people arrested in an FBI undercover investigation called Operation Guard Shack. According to court testimony, Gonzalez Miranda received \$2,000 each time he participated in a drug transaction. He was convicted of three counts of conspiring to possess with attempt to distribute more than 5 kilos of cocaine, plus three counts of possession of a firearm in furtherance of a drug transaction.

**Tennessee:** The Tennessee Bureau of Investigation confirmed on January 10, 2014 that Grainger County jailer Jacob Scott Layel, the son of the county's sheriff, was one of five former jail employees indicted on various misconduct charges following the escape of three prisoners from the facility in November 2013. The TBI conducted the investigation to identify security and operational flaws at the jail because the escape had gone unnoticed for several days. Sheriff Scott Layel, a chief deputy and one of the indicted employees were also named as defendants in an unrelated lawsuit filed by three female prisoners who said they were repeatedly raped at the jail.

**Texas:** On December 3, 2013, U.S. District Court Judge Andrew S. Hanen said corruption in the Cameron County legal system and judiciary was so pervasive

that most people probably wouldn't believe it. On that same day, former Texas state district judge Abel C. Limas surrendered to U.S. Marshals to begin serving a six-year federal prison term for accepting bribes to render favorable rulings in civil cases. Criminal charges against 12 defendants, all members of the Cameron County legal community, were brought after Limas' misconduct was discovered. All but one were convicted.

**Texas:** Travis County District Attorney Rosemary Lehmberg will keep her job despite a drunk driving arrest, some bad behavior while in jail and a civil case intended to force her from office. [See: *PLN*, Sept. 2013, p.56]. On December 11, 2013, Judge David Peeples ruled after three days of testimony that he would not remove Lehmberg as the top felony prosecutor in Travis County. Testimony during the hearing described Lehmberg's drinking habits and medical conditions, but was not enough to convince Peeples to relieve her of her duties. The ruling ended months of speculation as to the future of Lehmberg's role in Texas' criminal justice system. On July 15, 2014, a lawsuit was filed against Lehmberg by a former state prosecutor who claimed he was fired for requesting

an investigation into her actions.

**Texas:** On November 3, 2013, 37-year-old Sarah Tibbetts, an insulin-dependent diabetic, collapsed and died at the Irving jail. Following an investigation into her death, on January 24, 2014 two jail supervisors were fired, two guards were reprimanded and two other employees received counseling. Tibbetts' mother, who lives in California, was contacted by jail officials on November 2, 2013 and asked to bring insulin to Texas. She told them it was impossible for her to travel to the jail, but warned that her daughter would die without insulin. Sarah Tibbetts had been incarcerated at the jail previously but was taken to a hospital for treatment during prior stays at the facility.

**United Kingdom:** Five guards at HM Prison Parc in South Wales denied wrongdoing in an alleged drug smuggling conspiracy, and, soon afterward, a court case against them fell apart when prisoners at the

#### Assistants Online

562 S Hwy 123 Bypass #232  
Seguin, TX 78155-9752  
Lit.submissions/typing/copies  
Gifts/books/email acct/searches

#### MIDNIGHT EXPRESS BOOKS

THE PREFERRED & ONLY FULL TIME  
company helping inmate authors  
publish books for 10+ years.  
PO Box 69, Dept PLN,  
Berryville, AR 72616  
Midnightexpressbooks.com  
Corrlinks: MEBooks1@yahoo.com

#### FREEDOM WRITER

Honest, professional, yet  
affordable document production  
specializing in writs and parole  
packets. All other legal documents  
also welcome. Send SASE to:  
PO Box 821031  
Dallas, TX 75231

#### Education Behind Bars Newsletter

Free electronic newsletter  
for prisoners via CorrLinks.  
Add news@prisonlawblog.com  
to subscribe. The content  
is curated specifically  
for prisoners.

#### SURROGATE SISTERS

Celebrating 18+Years in Business  
No Games. We Sell Photos of Sexy  
Women, Gifts for Loved Ones,  
Erotic Stories & Pen-Pal Service  
Free Info & Flyer Send SASE to:  
Surrogate Sister - PN  
PO Box 95043, Las Vegas NV 89193

#### Prisonerinmatefamilyservice.com

Send a SASE for a free catalog;  
PO Box 1852, Pismo Beach, CA 93448  
We buy stamps — \$7.50 a book;  
Single stamps .25 cents; Amazon  
Orders, copies of photos/artwork  
And SO much more!  
FamilyInmateSev@aol.com

#### LOCAL PHONE NUMBERS \$2.50/MO.

USA anywhere 5¢/min. To MX 15¢  
Great rates all over the world!  
No signup fee, no hidden fees!  
Refer new cust, 300 free mins!  
www.FreedomLine.net to sign up  
or write FreedomLine, Box 7-WCB  
C'ville IN 47331. Save BIG \$\$\$!

#### \*\*Bottle Thoughts Gift Store\*\*

Show someone you are thinking of  
them by sending a Special Gift  
Send SASE for FREE Brochure  
PO Box 110752, Carrollton, TX 75011  
Corrlinks: sales@bottletoughts.com  
Contact us 1-877-705-0425  
FREE Shipping on All Gift Orders

#### Celebrity Photos For Sale:

Send self-addressed stamped  
envelope for lists. Name stars  
you would like to order photos of  
Photos are Non-Nude.  
Photoworld-PLN  
PO Box 401016  
Las Vegas, NV 89140

#### Great Goods has Moved!

Please send all stamp orders  
and information requests to:  
Great Goods, PO Box 2027,  
Bloomington, IN, 47402.  
greatgoods2027@gmail.com.  
See our ad for updated rates.  
Thank you for your business!

facility refused to testify. A sixth defendant, Philip Finselbach, pleaded guilty to involvement in the conspiracy, which according to anonymous sources involved smuggling cell phones, marijuana and heroin. On January 16, 2014, a judge declined to sentence Finselbach, who said he had feared for the safety of himself and his family if he did not participate in the scheme. HM Prison Parc is run by a private company, G4S.

**Washington:** On January 31, 2014,

the *Christian Science Monitor* reported that in an effort to reduce food disposal costs and enrich a gardening program that provides vegetables for the prison's kitchen and local food banks, the Monroe Correctional Complex has turned to vermiculture – the breeding and raising of earthworms. The program began with 200 red wigglers and has grown to a “wormery” which currently holds 5 million of the invertebrates. The worms can process 10,000 pounds of food scraps per month and the byproducts – worm manure and “worm tea” – are used as a rich fertilizer on several acres of

gardens at the facility.

**Wisconsin:** In a Grant County courtroom on January 20, 2014, former parole officer Sherry Buswell pleaded no contest to 21 felonies related to stealing money from parolees and depositing it into her personal bank account. She faced more than 70 years in prison, but was sentenced in March 2014 to 18 months and over \$8,000 in restitution. Buswell was also required to write a letter of apology to each of her victims. The thefts were discovered after a co-worker reviewed several of her cases and became suspicious due to “numerous inconsistencies.”

## Criminal Justice Resources

### **ACLU National Prison Project**

Handles state and federal conditions of confinement claims affecting large numbers of prisoners. Publishes the NPP Journal (available online at: [www.aclu.org/national-prison-project-journal-fall-2011](http://www.aclu.org/national-prison-project-journal-fall-2011)) and the Prisoners' Assistance Directory (write for more information). Contact: ACLU NPP, 915 15th St. NW, 7th Fl., Washington, DC 20005 (202) 393-4930. [www.aclu.org/prisons](http://www.aclu.org/prisons)

### **Amnesty International**

Compiles information about prisoner torture, beatings, rape, etc. to include in reports about U.S. prison conditions; also works on death penalty issues. Contact: Amnesty International, 5 Penn Plaza, New York NY 10001 (212) 807-8400. [www.amnestyusa.org](http://www.amnestyusa.org)

### **Center for Health Justice**

Formerly CorrectHELP. Provides information related to HIV in prison – contact them if you are not receiving proper HIV medication or are denied access to programs due to HIV status. Contact: CHJ, 900 Avila Street, Suite 102, Los Angeles, CA 90012. HIV Hotline: (214) 229-0979 (collect calls from prisoners OK). [www.centerforhealthjustice.org](http://www.centerforhealthjustice.org)

### **Centurion Ministries**

Works to exonerate the wrongfully convicted, in both cases involving DNA evidence and those that do not. Centurion only takes 1-2 new cases a year involving actual innocence. They do not consider accidental death or self-defense murder cases, he said/she said rape cases, or child abuse or child sex abuse cases unless there is physical evidence. All case inquiries must be from the prisoner involved, in writing. Contact: Centurion Ministries, 221 Witherspoon Street, Princeton, NJ 08542 (609) 921-0334. [www.centurionministries.org](http://www.centurionministries.org)

### **Critical Resistance**

Seeks to build an international movement to abolish the Prison Industrial Complex, with offices in Florida, California, New York, Texas and Louisiana. Publishes The Abolitionist newsletter. Contact: Critical Resistance, 1904 Franklin Street #504, Oakland, CA 94612 (510) 444-0484. [www.criticalresistance.org](http://www.criticalresistance.org)

### **The Exoneration Project**

The Exoneration Project is a non-profit organization dedicated to working to free prisoners who were wrongfully convicted. The Project represents innocent individuals in post-conviction legal proceedings; typical cases involve DNA testing, coerced confessions, police misconduct, the use of faulty evidence, junk science and faulty eyewitness testimony, and ineffective assistance of counsel claims. Contact: The Exoneration Project, 312 North May Street, Suite 100, Chicago, Illinois 60607 (312) 789-4955. [www.exonerationproject.org](http://www.exonerationproject.org)

### **Family & Corrections Network**

Primarily provides online resources for families of prisoners related to parenting, children of prisoners, prison visitation, mothers and fathers in prison, etc. Contact: F&CN, 93 Old York Road, Suite 1 #510, Jenkintown, PA 19046 (215) 576-1110. [www.fcnetwork.org](http://www.fcnetwork.org)

### **FAMM**

FAMM (Families Against Mandatory Minimums) publishes the FAMMgram three times a year, which includes information about injustices resulting from mandatory minimum laws with an emphasis on federal laws. Recommended donation of \$10 for a subscription. Contact: FAMM, 1612 K Street NW #700, Washington, DC 20006 (202) 822-6700. [www.famm.org](http://www.famm.org)

### **The Fortune Society**

Provides post-release services and programs for prisoners in the New York City area and occasionally publishes Fortune News, a free publication for prisoners that deals with criminal justice issues, primarily in New York. Contact: The Fortune Society, 29-76 Northern Blvd., Long Island City, NY 11101 (212) 691-7554. [www.fortunesociety.org](http://www.fortunesociety.org)

### **Innocence Project**

Provides advocacy for wrongly convicted prisoners whose cases involve DNA evidence and are at the post-conviction appeal stage. Maintains an online list of state-by-state innocence projects. Contact: Innocence Project, 40 Worth St., Suite 701, New York, NY 10013 (212) 364-5340. [www.innocenceproject.org](http://www.innocenceproject.org)

### **Just Detention International**

Formerly Stop Prisoner Rape, JDI seeks to end sexual violence against prisoners. Provides counseling resources for imprisoned and released rape survivors and activists for almost every state. Contact: JDI, 3325 Wilshire Blvd. #340, Los Angeles, CA 90010 (213) 384-1400. [www.justdetention.org](http://www.justdetention.org)

### **Justice Denied**

Although no longer publishing a print magazine, Justice Denied continues to provide the most comprehensive coverage of wrongful convictions and how and why they occur. Their content is available online, and includes all back issues of the Justice Denied magazine and a database of more than 3,000 wrongly convicted people. Contact: Justice Denied, P.O. Box 68911, Seattle, WA 98168 (206) 335-4254. [www.justicedenied.org](http://www.justicedenied.org)

### **National CURE**

Citizens United for Rehabilitation of Errants (CURE) is a national organization with state and special interest chapters that advocates for rehabilitative opportunities for prisoners and less reliance on incarceration. Publishes the CURE Newsletter. \$2 annual membership for prisoners. Contact: CURE, P.O. Box 2310, National Capitol Station, Washington, DC 20013 (202) 789-2126. [www.curenational.org](http://www.curenational.org)

### **November Coalition**

Publishes the Razor Wire, a bi-annual newsletter that reports on drug war-related issues, releasing prisoners of the drug war and restoring civil rights. A subscription is \$10 for prisoners and \$30 for non-prisoners. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 684-1550. [www.november.org](http://www.november.org)

### **Prison Activist Resource Center**

PARC is a prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, able-ism, heterosexism and classism, specifically within the Prison Industrial Complex. PARC produces a free resource directory for prisoners, and supports activists working to expose and end the abuses of the Prison Industrial Complex and mass incarceration. Contact: PARC, P.O. Box 70447, Oakland, CA 94612 (510) 893-4648. [www.prisonactivist.org](http://www.prisonactivist.org)

# Prison Legal News Book Store

Fill in the boxes next to each book you want to order, indicating the quantity and price. Enter the Total on the Order Form on the next page.  
**FREE SHIPPING on all book orders OVER \$50 (effective 8-1-2014 until further notice). \$6.00 S/H applies to all other book orders.**

## SUBSCRIBE TO PLN FOR 4 YEARS AND CHOOSE ONE BONUS!

1. SIX (6) FREE ISSUES FOR 54 TOTAL! OR
2. PRISON PROFITEERS (A \$24.95 VALUE!) OR
3. THE HABEAS CITEBOOK (A \$49.95 VALUE!)

**Prison Profiteers**, edited by Paul Wright and Tara Herivel, 323 pages. \$24.95. This is the third book in a series of Prison Legal News anthologies that examines the reality of mass imprisonment in America. *Prison Profiteers* is unique from other books because it exposes and discusses who profits and benefits from mass imprisonment, rather than who is harmed by it and how. 1063

**The Habeas Citebook: Ineffective Assistance of Counsel**, by Brandon Sample, PLN Publishing, 200 pages. \$49.95. This is PLN's second published book, written by federal prisoner Brandon Sample, which covers ineffective assistance of counsel issues in federal habeas petitions. Includes hundreds of case citations! 1078

**Prison Nation: The Warehousing of America's Poor**, edited by Tara Herivel and Paul Wright, 332 pages. \$35.95. PLN's second anthology exposes the dark side of the 'lock-em-up' political agenda and legal climate in the U.S. 1041

**The Ceiling of America, An Inside Look at the U.S. Prison Industry**, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. \$22.95. PLN's first anthology presents a detailed "inside" look at the workings of the American justice system. 1001

**Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada**, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, PLN Publishing, 221 pages. \$49.95. Written by Missouri prisoner Jon Marc Taylor, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, paralegal and college courses by mail. 1071

**The Criminal Law Handbook: Know Your Rights, Survive the System**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 608 pages. \$39.99. Explains what happens in a criminal case from being arrested to sentencing, and what your rights are at each stage of the process. Uses an easy to understand question-and-answer format. 1038

**Represent Yourself in Court: How to Prepare & Try a Winning Case**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 528 pages. \$39.99. Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. The authors explain what to say in court, how to say it, etc. 1037

**The Merriam-Webster Dictionary, New Edition**, 939 pages. \$8.95. This paperback dictionary is a handy reference for the most common English words, with more than 65,000 entries. 2015

**The Blue Book of Grammar and Punctuation**, by Jane Straus, 110 pages. \$19.99. A guide to grammar and punctuation by an educator with experience teaching English to prisoners. 1046

**Legal Research: How to Find and Understand the Law**, by Stephen Elias and Susan Levinkind, 568 pages. \$49.99. Comprehensive and easy to understand guide on researching the law. Explains case law, statutes and digests, etc. Includes practice exercises. 1059

**Deposition Handbook**, by Paul Bergman and Albert Moore, Nolo Press, 352 pages. \$34.99. How-to handbook for anyone who conducts a deposition or is going to be deposed. 1054

**Criminal Law in a Nutshell**, by Arnold H. Loewy, 5th edition, 387 pages. \$43.95. Provides an overview of criminal law, including punishment, specific crimes, defenses & burden of proof. 1086

## SUBSCRIBE TO PLN FOR 3 YEARS AND CHOOSE ONE BONUS!

1. FOUR (4) FREE ISSUES FOR 40 TOTAL! OR
2. PROTECTING YOUR HEALTH AND SAFETY (A \$10.00 VALUE!)

**Protecting Your Health and Safety**, by Robert E. Toone, Southern Poverty Law Center, 325 pages. \$10.00. This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how to enforce your rights, including through litigation. 1060

**Spanish-English/English-Spanish Dictionary**, 2nd ed., Random House. \$15.95. Spanish-English and English-Spanish. 60,000+ entries from A to Z; includes Western Hemisphere usage. 1034a

**Writing to Win: The Legal Writer**, by Steven D. Stark, Broadway Books/Random House, 283 pages. \$19.95. Explains the writing of effective complaints, responses, briefs, motions and other legal papers. 1035

**Actual Innocence: When Justice Goes Wrong and How to Make it Right**, updated paperback ed., by Barry Scheck, Peter Neufeld and Jim Dwyer, 403 pages. \$17.99. Describes how criminal defendants are wrongly convicted. Explains DNA testing and how it works to free the innocent. Devastating critique of police and prosecutorial misconduct. 1030

**All Alone in the World: Children of the Incarcerated**, by Nell Bernstein, 303 pages. \$19.95. Award-winning journalist Nell Bernstein takes an intimate look at the effects incarceration has on imprisoned parents and their children. 2016

**Everyday Letters for Busy People**, by Debra Hart May, 287 pages. \$21.99. Hundreds of sample letters that can be adapted for most any purpose, including letters to government agencies and officials. Has numerous tips for writing effective letters. 1048

**Roget's Thesaurus**, 717 pages. \$8.95. Helps you find the right word for what you want to say. 11,000 words listed alphabetically with over 200,000 synonyms and antonyms. Sample sentences and parts of speech shown for every main word. Covers all levels of vocabulary and identifies informal and slang words. 1045

**Beyond Bars, Rejoining Society After Prison**, by Jeffrey Ian Ross, Ph.D. and Stephen C. Richards, Ph.D., Alpha, 240 pages. \$14.95. *Beyond Bars* is a practical and comprehensive guide for ex-convicts and their families for managing successful re-entry into the community, and includes information about budgets, job searches, family issues, preparing for release while still incarcerated, and more. 1080

**Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A.**, by Mumia Abu Jamal, City Lights Publishers, 280 pages. \$16.95. In *Jailhouse Lawyers*, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned-advocates who have learned to use the court system to represent other prisoners. 1073

**With Liberty for Some: 500 Years of Imprisonment in America**, by Scott Christianson, Northeastern University Press, 372 pages. \$18.95. The best overall history of the U.S. prison system from 1492 through the 20th century. A must-read for understanding how little things have changed in U.S. prisons over hundreds of years. 1026

**Complete GED Preparation**, by Steck-Vaughn, 922 pages. \$24.99. This useful handbook contains over 2,000 GED-style questions to thoroughly prepare students for taking the GED test. It offers complete coverage of the revised GED test with new testing information, instructions and a practice test. 1099

**\* ALL BOOKS SOLD BY PLN ARE SOFTCOVER / PAPERBACK \***

**Hepatitis and Liver Disease: What You Need to Know**, by Melissa Palmer, MD, 457 pages. **\$19.99.** Describes symptoms & treatments of hepatitis B & C and other liver diseases. Includes medications to avoid, what diet to follow and exercises to perform, plus a bibliography. 1031 ☐

**Arrested: What to Do When Your Loved One's in Jail**, by Wes Denham, 240 pages. **\$16.95.** Whether a defendant is charged with misdemeanor disorderly conduct or first-degree murder, this is an indispensable guide for those who want to support family members, partners or friends facing criminal charges. 1084 ☐

**Prisoners' Self-Help Litigation Manual**, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 960 pages. **\$39.95.** The premiere, must-have "Bible" of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Highly recommended! 1077 ☐

**How to Win Your Personal Injury Claim**, by Atty. Joseph Matthews, 7th edition, NOLO Press, 304 pages. **\$34.99.** While not specifically for prison-related personal injury cases, this book provides comprehensive information on how to handle personal injury and property damage claims arising from accidents. 1075 ☐

**Sue the Doctor and Win! Victim's Guide to Secrets of Malpractice Lawsuits**, by Lewis Laska, 336 pages. **\$39.95.** Written for victims of medical malpractice/neglect, to prepare for litigation. Note that this book addresses medical malpractice claims and issues in general, not specifically related to prisoners. 1079 ☐

**Advanced Criminal Procedure in a Nutshell**, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **\$43.95.** This text is designed for supplemental reading in an advanced criminal procedure course on the post-investigation processing of a criminal case, including prosecution and adjudication. 1090 ☐

**Our Bodies, Ourselves**, by The Boston Women's Health Book Collective, 944 pages. **\$26.00.** This book about women's health and sexuality has been called "America's best-selling book on all aspects of women's health," and is a great resource for women of all ages. 1082 ☐

**Arrest-Proof Yourself**, by Dale Carson and Wes Denham, 288 pages. **\$14.95.** This essential "how not to" guide written by an ex-cop explains how to act and what to say when confronted by the police to minimize the chances of being arrested and avoid additional charges. Includes information on basic tricks that police use to get people to incriminate themselves. 1083 ☐

**Nolo's Plain-English Law Dictionary**, by Gerald N. Hill and Kathleen T. Hill, 496 pages. **\$29.99.** Find terms you can use to understand and access the law. Contains 3,800 easy-to-read definitions for common (and not so common) legal terms. 3001 ☐

**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFave, 7th edition, 603 pages. **\$43.95.** Intended for use by law students, this is a succinct analysis of constitutional standards of major significance in the area of criminal procedure. 1085 ☐

**Win Your Lawsuit: Sue in CA Superior Court without a Lawyer**, by Judge Roderic Duncan, 445 pages (4th edition 2010). **\$39.99.** This plain-English guide shows you how to prepare a complaint, file and serve papers, participate in settlement negotiations, present a case and much more. The 4th edition has been revised to reflect recent court procedures and includes updated forms. 2014 ☐

**Coming Soon! Disciplinary Self-Help Litigation Manual**, by Daniel Manville. By the co-author of the *Prisoners' Self-Help Litigation Manual*, this book provides detailed information about prisoners' rights in disciplinary hearings and how to enforce those rights in court. Published by Prison Legal News Publishing, this title should be available by Nov. 15, 2014.

#### Subscription Rates

	1 year	2 years	3 years	4 years
<b>Prisoners</b>	<b>\$30</b>	<b>\$ 60</b>	<b>\$ 90</b>	<b>\$120</b>
<b>Individuals</b>	<b>\$35</b>	<b>\$ 70</b>	<b>\$105</b>	<b>\$140</b>
<b>Professionals</b>	<b>\$90</b>	<b>\$180</b>	<b>\$270</b>	<b>\$360</b>

(Attorneys, agencies, libraries)

#### Subscription Bonuses

- 2 years** - 2 bonus issues for 26 total issues
- 3 years** - 4 bonus issues (40 total) or a bonus book as listed on pg. 61
- 4 years** - 6 bonus issues (54 total) or a bonus book as listed on pg. 61

(All subscription rates and bonus offers are valid as of 8-1-2014)



Purchase with Visa, MasterCard, AmEx or Discover by phone: **561-360-2523**

Or buy books and subscriptions online: **www.prisonlegalnews.org**



#### Mail Payment and Order to:

Prison Legal News  
P.O. Box 1151  
Lake Worth, FL 33460

All purchases must be pre-paid. Prisoners can pay with new first-class stamps (strips or books only, no single stamps) or pre-stamped envelopes, if allowed by institutional policies.

Please Change my Address to what is entered below ☐

#### Mail Order To:

Name: \_\_\_\_\_

DOC #: \_\_\_\_\_

Suite/Cell: \_\_\_\_\_

Agency/Inst: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

#### Subscribe to Prison Legal News

\$ Amount

6 month subscription (prisoners only) - \$18 \_\_\_\_\_

1 yr subscription (12 issues) \_\_\_\_\_

2 yr subscription (2 bonus issues for 26 total!) \_\_\_\_\_

3 yr sub (write below which FREE book you want) \_\_\_\_\_

or 4 bonus issues for 40 issues total!

4 yr sub (write below which FREE book you want) \_\_\_\_\_

or 6 bonus issues for 54 issues total!

Single back issue or sample copy of PLN - \$5.00 each \_\_\_\_\_

#### Books Orders (No S/H charge on 3 & 4-year

subscription free books OR book orders OVER \$50!) Qty.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Add \$6.00 S/H to BOOK ORDERS under \$50**

(PLN subs do not count towards \$50 for free S/H for book orders)

**FL residents ONLY add 6% to Total Book Cost** \_\_\_\_\_

**TOTAL Amount Enclosed:** \_\_\_\_\_

\* **NO REFUNDS on PLN subscription or book orders after orders have been placed.** \*

\* **We are not responsible for incorrect addresses or address changes after orders have been placed.** \*



# PRISONLEGALNEWS.org

**Dedicated to Protecting Human Rights**

>>FREE Data Search |

Decisions

Investigations

Audits

Publications

Cases

Verdicts

Settlements

**If you need to know about prisons and jails or are litigating a detention facility case, you can't afford not to subscribe to our website!**

**Online subscribers get unlimited, 24-hour a day access to the website and its content!**

**Sign up for PLN's FREE listserv to receive prison and jail news and court rulings by e-mail.**

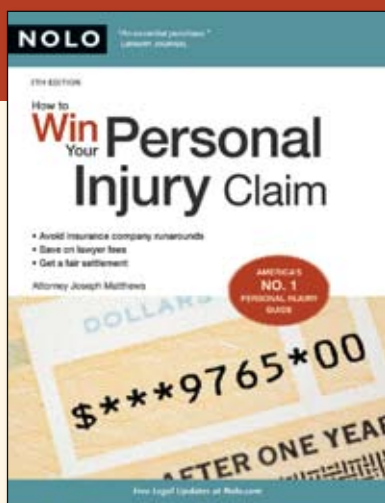
- ▶ PLN's website offers all issues of PLN in both searchable database and PDF formats. Issues are indexed and posted as soon as they go to press.
- ▶ Publications section has numerous downloadable government reports, audits and investigations from around the country.
- ▶ Full text decisions of thousands of court cases, published and unpublished.
- ▶ All content is easy to print for downloading and mailing to prisoners.
- ▶ Most complete collection of prison and jail related verdicts and settlements anywhere.
- ▶ Order books, print subscriptions and make donations on line.

- ▶ Brief bank with a wide assortment of winning motions, briefs, complaints and settlements.
- ▶ Links to thousands of prison, jail, criminal justice and legal websites around the world.
- ▶ Thousands of articles and cases, all fully indexed by more than 500 subjects, searchable by case name, case year, state of origin, court, author, location, case outcome, PLN issue and key word search.
- ▶ Search free, pay only if you find it!
- ▶ The highest quality, most comprehensive prison litigation news and research site in the world.

**Affordable rates to meet your budget  
\$19.95 per month • \$149.95 per year**

**Subscribe to Prison Legal News Online! <http://www.prisonlegalnews.org>**

## Great Self-Help Book Deals From Prison Legal News!



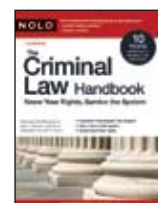
**Order from Prison Legal News**  
Add \$6 shipping for orders under \$50  
  
Prison Legal News  
PO Box 1151  
Lake Worth, FL 33460  
Phone: 561-360-2523  
[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

### How to Win Your Personal Injury Claim

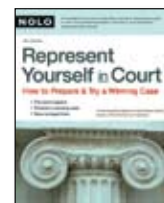
\$34.99

*How to Win Your Personal Injury Claim* shows you how to handle almost every accident situation, and guides you through the insurance claim process, step by step. Learn how to:

- protect your rights after an accident
- determine what your claim is worth
- handle a property-damage claim
- deal with uncooperative doctors, lawyers and insurance companies
- counter the special tactics insurance companies use
- prepare a claim for compensation
- negotiate a full and fair settlement
- stay on top of your case if you hire a lawyer



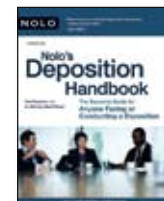
The Criminal Law Handbook  
\$39.99



Represent Yourself in Court  
\$39.99



Legal Research  
\$49.99



Nolo's Deposition Handbook  
\$34.99

**NOLO  
YOUR LEGAL COMPANION**





## Prison Legal News

PO Box 1151  
Lake Worth FL 33460

Change Service Requested

Non-Profit Org.  
U.S. Postage  
PAID  
Portland OR  
Permit No. 3142

### Subscription Renewal

Subscriptions expire after the issue shown on the label is mailed. For example, if the label says: EXPIRES 02/2015, then the subscription expires after the February 2015 issue is mailed. Please renew at least 2 months before the expiration date. IF THE LABEL SAYS **EXPIRES: 10/2014** THIS IS YOUR LAST ISSUE. Please renew immediately to avoid missing any issues.

### Change of Address

If you move or are transferred, please notify PLN as soon as possible so your issues can be mailed to your new address! PLN only accepts responsibility for sending an issue to the address provided at the time an issue is mailed!

**New & Improved**



# INMATE SHOPPER

**New Owners**

EXPANDED CONTENT IN EVERY ISSUE STARTS NOV. '14

<b>Non Nude Girls</b> <b>Pen Pal Resources</b> <b>Gift Shops</b> <b>Catalogs to Order</b> <b>Sexy Photo Sellers</b> <b>Typists</b> <b>Personal Assistants</b> <b>Magazine Sellers</b> <b>Publishing Services</b> <b>Contains 250+ pgs.</b>	<b>SPORT SCHEDULES (seasonal)</b> <b>Football • Basketball • Hockey</b> <b>Baseball • Nascar • Soccer</b>  <b>SEGMENTS FROM THE ARTS</b> <b>Writing • Music • Art • Poetry</b>  <b>ENTERTAINMENT</b> <b>Puzzles • Trivia • Games • Hobbies • Jokes</b>  <b>SPECIAL FEATURE IN EACH ISSUE</b>	<b>Business Directory</b> <b>Business Ratings</b> <b>GLBT Section</b> <b>Contest for Writers &amp; Artists</b> <b>Articles, Tips &amp; Facts</b> <b>Resources</b> <b>New Content Every Issue</b> <b>Something for Everyone</b> <b>3 New Issues Per Year</b>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**No Order Form Needed:**  
CLEARLY WRITE ON PAPER & SEND WITH PAYMENT TO:  
**INMATE SHOPPER**  
Box 533, NORTH DIGHTON, MA 02764  
[WWW.INMATESHOPPER.COM](http://WWW.INMATESHOPPER.COM)

⇒ Send Me the **CURRENT ISSUE** Inmate Shopper:

⇒ Send Me the **NEXT ISSUE** Inmate Shopper: ☐ March ☐ July ☐ Nov/Holiday

⇒ Send Me the **CENSORED ISSUE** Inmate Shopper Without Pen Pal Content & No Sexy Girls - No More Rejections

**Order Your New Copy Today... Only \$24.99 Incl. S&H w/tracking**



## Prosecutorial Misconduct: Taking the Justice Out of Criminal Justice

by Christopher Zoukis

*The prosecutor has more control over life, liberty, and reputation than any other person in America. His discretion is tremendous.... While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst.*  
—Former U.S. Attorney General Robert Jackson

IN A RECENT CASE BEFORE THE U.S. COURT of Appeals for the Fourth Circuit, veteran judge Henry F. Floyd offered a rare public rebuke of federal prosecutors in North Carolina, who, the court found, had engaged in a pattern of misconduct.

“Mistakes happen,” Floyd wrote. “Flawless trials are desirable but rarely at-

tainable. Nevertheless, the frequency of the ‘flubs’ committed by [the prosecutors] raises questions regarding whether the errors are fairly characterized as unintentional.”

“Yet the United States Attorney’s office in this district seems unfazed by the fact that discovery abuses violate constitutional guarantees and misrepresentations erode faith that justice is achievable,” he added. “Something must be done.”

To demonstrate the seriousness of the violations, the appellate court ordered a new trial for federal prisoner Gregory Bartko, who had been convicted in 2010 in connection with a conspiracy to sell millions of dollars in fraudulent securities. See: *United States v. Bartko*, 728 F.3d 327 (4th Cir. 2013), *cert. denied*.

As an additional sanction, the Fourth Circuit panel said it would present its concerns to U.S. Attorney General Eric Holder, who is ultimately responsible for the actions of federal prosecutors, and to the Department of Justice’s Office of Professional Responsibility.

Judging from several decades of data demonstrating there is virtually no accountability for both state and federal prosecutors, it is unlikely that the prosecutors in the *Bartko* case will face sanctions for their misconduct. Indeed, prosecutors appear to enjoy special dispensation for abuses committed in the pursuit of justice – few are ever held accountable or face meaningful discipline.

This article examines the pervasiveness of prosecutorial misconduct in the U.S. justice system and the broken and inadequate means of preventing and punishing such wrongdoing. *Prison Legal News* has reported extensively on abuses by prosecu-

tors, which have resulted in untold numbers of compromised trials, unfair sentences and wrongful convictions.

### Prevalence of Prosecutorial Misconduct

PROSECUTORIAL MISCONDUCT IS, IN THE words of noted Harvard Law School professor Alan Dershowitz, “rampant.” Due to the lack of a uniform reporting body – each state has its own attorney discipline system – the number of criminal cases affected by prosecutorial abuses is unknown. Research studies have shed some light on this subject, though.

A 2003 report by the Center for Public Integrity, a nonprofit government watchdog group, examined more than 11,400 allegations of prosecutorial misconduct in appellate rulings between 1970 and 2003. In 2,012 of those cases (17.6%), misconduct by prosecutors led to dismissals, sentence reductions or reversals. Few prosecutors, however, were sanctioned for the violations cited by the appellate courts; only 44 faced disciplinary action, and seven of those cases were dismissed.

A comprehensive 2009 study by the Northern California Innocence Project examined 707 cases in which California appellate courts found prosecutorial misconduct between 1997 and 2009. Of those cases, the misconduct in 159 was deemed “harmful.” The study noted that 67 prosecutors were found by the courts to have committed multiple infractions; however, during that time period just six were disciplined.

While most criminal cases are handled by state and local prosecutors, federal prosecutors – popularly viewed as having higher

## INSIDE

Prosecutors Breaking Bad	24
From the Editor	28
Death Sentences Reversed	30
Wells Fargo & Private Prisons	32
Prison-Based Email Systems	35
Repackaging Mass Incarceration	36
\$1 million for FL Jail Death	40
Habeas Hints	42
CCA Prison Inspections in Ohio	44
Norris Henderson: A Profile	46
Problems with Video Visitation	48
MO Censorship Suit Settled	50
News in Brief	56



## **TAKE ACTION ON PRISON PHONE RATES – CONTACT THE FCC NOW!**

After nearly a decade, the Federal Communications Commission (FCC) took action in 2013 and issued an order, effective February 11, 2014, that capped the cost of interstate (long distance) prison phone rates. This led to an almost 80% decrease in interstate phone costs in some states, and those costs are now capped at \$.25/minute for collect calls and \$.21/minute for debit and prepaid calls. On September 25, 2014, the FCC indicated that it plans to take further action to reduce prison phone rates, including in-state (intrastate) rates – which still remain high in many jurisdictions. In fact, in-state phone rates are now higher than long distance rates in many cases.

You can submit a public comment to the FCC; even if you have sent comments before, you can resubmit them or submit new information. Please write to the FCC as soon as possible, addressing any of the following topics:

- **Positive Impact of the FCC Order Reducing Interstate Calls:** Let the FCC know how the rate caps on interstate prison phone calls have resulted in lower costs or helped you and your family!
- **Negative Impact of Intrastate Phone Calls:** While the FCC capped long distance phone rates, the order did not apply to in-state calls, which make up 85% of all calls from prisons and jails. How much do you or your family pay for in-state phone calls? The FCC needs to hear about this issue so they know why intrastate prison phone rates need to be reduced, too.
- **Ancillary Fees:** Do you or your family have to pay extra fees (ancillary fees) to make or accept calls, such as fees to set up, add money to or cancel a prepaid or debit prison phone account? Are you charged fees but were not told about them before they were charged? How much are these fees? Have they increased?
- **Importance of Prison Phone Reforms:** Tell the FCC why it is important to enact permanent reform of prison phone rates for interstate and in-state calls, including rate caps and the elimination of “commission” payments to corrections agencies. Also, the FCC needs details about fee-based video visitation services.

*Comments can be sent by mail to:*

**Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW; Room TW-B204  
Washington, DC 20554**

Address the letter “Dear Secretary Dortch,” and please speak from your personal experience. You must state the following in your letter: “This is a public comment for **WC Docket Number 12-375**.” Note that your comment will be made part of the public docket.

People with Internet access can register their comments online with the FCC, by entering Proceeding Number **12-375** and uploading a document at this address: <http://apps.fcc.gov/ecfs/upload/display.action?z=nyy6z>

For more information about the fight to reduce prison phone rates, visit the Campaign for Prison Phone Justice:

**[www.phonejustice.org](http://www.phonejustice.org)**



# Prison Legal News

a publication of the  
Human Rights Defense Center  
[www.humanrightsdefensecenter.org](http://www.humanrightsdefensecenter.org)

## EDITOR

Paul Wright

## MANAGING EDITOR

Alex Friedmann

## COLUMNISTS

Michael Cohen, Kent Russell,  
Mumia Abu-Jamal

## CONTRIBUTING WRITERS

Matthew Clarke, John Dannenberg,  
Derek Gilna, Gary Hunter,  
David Reutter, Mark Wilson,  
Joe Watson, Christopher Zoukis

## RESEARCH ASSOCIATE

Mari Garcia

## ADVERTISING DIRECTOR

Susan Schwartzkopf

## LAYOUT

Lansing Scott

## HRDC LITIGATION PROJECT

Lance Weber—General Counsel  
Sabarish Neelakanta—Staff Attorney

## PLN is a monthly publication.

A one year subscription is \$30 for prisoners, \$35 for individuals, and \$90 for lawyers and institutions. Prisoner donations of less than \$30 will be pro-rated at \$3.00/issue. Do not send less than \$18.00 at a time. All foreign subscriptions are \$100 sent via airmail. PLN accepts Visa and Mastercard orders by phone. New subscribers please allow four to six weeks for the delivery of your first issue. Confirmation of receipt of donations cannot be made without an SASE. PLN is a section 501 (c)(3) non-profit organization. Donations are tax deductible. Send contributions to:

Prison Legal News

PO Box 1151

Lake Worth, FL 33460

561-360-2523

[info@prisonlegalnews.org](mailto:info@prisonlegalnews.org)

[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

PLN reports on legal cases and news stories related to prisoner rights and prison conditions of confinement. PLN welcomes all news clippings, legal summaries and leads on people to contact related to those issues.

Article submissions should be sent to - The Editor - at the above address. We cannot return submissions without an SASE. Check our website or send an SASE for writer guidelines.

Advertising offers are void where prohibited by law and constitutional detention facility rules.

PLN is indexed by the *Alternative Press Index*, *Criminal Justice Periodicals Index* and the *Department of Justice Index*.

## Prosecutorial Misconduct (cont.)

ethical standards – were the subject of a six-month *USA Today* investigation, published in 2010, that uncovered 201 cases since 1997 in which courts found that Assistant U.S. Attorneys (AUSAs) had violated laws or ethics rules. That number did not include cases involving misconduct not officially addressed by the courts, or violations handled internally. Yet only six federal prosecutors faced discipline and none were disbarred.

An August 2010 study by the Innocence Project, “Court Findings of Prosecutorial Misconduct Claims in Post-Conviction Appeals and Civil Suits Among the First 255 DNA Exoneration Cases,” found that of the 65 cases in the study “involving documented appeals and/or civil suits addressing prosecutorial misconduct, 31 (48%) resulted in court findings of error, with 18% of findings [leading] to reversals (harmful error).”

In another report published in April 2013, *ProPublica*, which produces independent journalism in the public interest, analyzed 30 cases where prosecutorial misconduct contributed to the vacatur of convictions between 2001 and 2011, including a number of cases in which victims of such misconduct received monetary compensation. Only one prosecutor involved in those cases faced serious discipline. That prosecutor, Claude Stuart, was forced to resign in 2002 after repeated misconduct – including withholding exculpatory evidence and lying to a judge – resulted in the reversal of multiple convictions.

According to the Center for Prosecutor Integrity, studies over the past 50 years, including some of those cited above, indicate that in 3,625 identified cases of prosecutorial misconduct, “public sanctions [were] imposed in only 63 cases – less than 2% of the time.” And of that discipline, just 14 prosecutors were suspended or disbarred. The Center maintains a national registry of prosecutorial misconduct, available at [www.prosecutorintegrity.org](http://www.prosecutorintegrity.org).

Overall, the consensus across these studies is that very few cases of prosecutorial misconduct result in disciplinary sanctions – and most sanctions amount to a proverbial slap on the wrist. Considering that *reported* cases of misconduct are relatively infrequent due to arcane complaint procedures, lax enforcement, and a culture of secrecy

and indifference by regulatory agencies, one must conclude that the problem of prosecutorial misconduct in our nation's criminal justice system is much greater than the official numbers reflect.

“Each year, thousands of Americans are victimized by prosecutors who overcharge, withhold key evidence, and engage in a myriad of other forms of professional misconduct,” the Center for Prosecutor Integrity stated in a 2013 report. “When these persons later seek redress, they encounter denial, resistance, and delays. More often than not, their efforts to receive even an apology end in futile exasperation.”

## Types of Misconduct

THE PROSECUTOR'S ROLE IN OUR ADVERSARIAL justice system – to obtain convictions, regardless of a defendant's guilt or innocence – necessarily creates competitiveness in terms of winning cases. But as stated by the U.S. Supreme Court, “[W]hile he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.” See: *Berger v. United States*, 295 U.S. 78, 88 (1935).

According to the Innocence Project and the Center for Prosecutor Integrity, the “foul blows” that prosecutors may strike can assume many forms, including:

- Charging a suspect with more offenses than is warranted
- Making race-based jury selection decisions in violation of *Batson v. Kentucky*
- Withholding or delaying the release of exculpatory evidence
- Deliberately mishandling, destroying or “losing” evidence
- Allowing witnesses they know or should know are not truthful to testify
- Pressuring or threatening defense witnesses not to testify
- Pressuring or threatening witnesses to testify for the prosecution
- Relying on fraudulent forensic experts
- During plea negotiations, overstating the strength of the evidence
- Making statements that are designed to arouse public indignation
- Making improper or misleading statements to the jury or court
- Failing to report misconduct by other prosecutors

Prosecutorial misconduct has many

## Prosecutorial Misconduct (cont.)

permutations. Beyond the more typical examples cited above, sometimes prosecutors simply break the law themselves, using their position of authority to further their own personal interests.

In one such case, on February 11, 2014, former Cameron County, Texas district attorney Armando R. Villalobos, once seen as a rising political star, was sentenced to 13 years in federal prison following his conviction for taking more than \$100,000 in bribes. According to the U.S. Attorney's office, his misconduct was part of a pattern of "extortion, favoritism, improper influence, personal self-enrichment, self-dealing, concealment, and conflict of interest."

Among other abuses, Villalobos was accused of allowing Amit Livingston, a convicted murderer, to remain free without bond before reporting to prison to serve a 23-year sentence. Why? So the \$500,000 in Livingston's bond money could be released to settle a civil lawsuit filed by the family of his victim, with Villalobos receiving a \$80,000 kickback from attorney fees paid in the suit.

Livingston didn't report to prison and fled to India, where he was eventually caught.

### A Focus on *Brady* Violations

BY FAR, THE MOST COMMONLY-CITED TYPE of prosecutorial misconduct in wrongful conviction cases involves the withholding of exculpatory evidence. While many forms of misconduct can result in a conviction being overturned, so-called "*Brady* violations," named after *Brady v. Maryland*, 373 U.S. 83 (1963), are most often reported, as the withheld evidence can lead to the reversal of a conviction or finding of innocence.

For example, Michael Morton spent almost 25 years in Texas prisons for murdering his wife, only to discover that Williamson County district attorney Ken Anderson had withheld evidence at his trial – including a transcript of a telephone conversation in which his young son said a "monster," not his father, had beaten his mother to death and that his father was "not home" at the time. Neighbors had seen a man in a green van parked in front of Morton's house several times before his wife's murder.

Based on the belated disclosure of this evidence, a DNA test on a bloody bandana found near the crime scene was matched to another suspect, Mark Alan Norwood, and Morton was released from prison in October 2011. He was exonerated two months later. Williamson County district attorney John Bradley had objected to the DNA testing. [See: *PLN*, Feb. 2012, p.50].

In *Brady*, the U.S. Supreme Court held that the "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."

There are three components of a *Brady* violation: The withheld evidence must be favorable to the defendant because it is exculpatory or can be used for impeachment purposes; the evidence must have been suppressed by the prosecution, either willfully or unintentionally; and prejudice to the defendant must have resulted.

Even when a defendant fails to properly request favorable evidence, the government is still liable for failure to disclose certain information. Constitutional error results if favorable evidence is withheld and "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."

While nondisclosure of *Brady* material constitutes a violation of sundry constitutional protections and professional standards, such violations are, in the words of the Sixth Circuit, "still a perennial problem, as multiple scholarly accounts attest."

In a case involving Abel Tavera, a defendant charged with drug offenses, federal prosecutor Donald W. Taylor was

## Prison Writing Contest!

Have something interesting to say about prison life?

Enter your essay to win money!

TOP 20 writers have a chance to become regular paid contributors to *PrisonReform101.com*, an upcoming website about prison reform.

**Write a 1-3 page essay (hand-written or typed) about your personal experiences and observations about a particular slice of prison life. Your essay can be serious, funny or straightforward.**

### SUGGESTED TOPICS (or pick your own):

\*prison food \*privacy \*cellmates \*sentencing \*survival skills \*solitary  
\*education \*visitation \*getting out \*gangs \*lockdowns \*medical care \*violence  
\*impact on families \*how you spend your time

**SEND SUBMISSIONS TO:**  
Kelly Lussia  
Contest Administrator  
Prison Reform 101, Inc.  
P.O. Box 1430  
New York, NY 10276

**DEADLINE: January 1st, 2015**

**PRIZES**  
**1st place = \$250**  
**2nd place = \$100**  
**3rd place = \$50**

**17 runner-ups = \$25**

**Include your name, DIN # and mailing address**

\*Please do NOT write about your individual case, your guilt or innocence, your parole suitability or your interest in attaining legal help. \*Due to the volume of entries, we won't be able to return unpublished manuscripts.

## Awesome Deal

**7photo pk.+ free cat.**

For 7.50 or 20 stamps

For cat. Only send

2.75 or 9 stamps to:

**Picture Entertainment,**

PO Box 54806,

L.A., CA 90054

**We also buy stamps  
at .31 each**

informed by a co-defendant that Tavera had no knowledge of the drug conspiracy. However, Taylor did not share that information with defense counsel. The appellate court reversed Tavera's conviction and recommended "that the U.S. Attorney's office for the Eastern District of Tennessee conduct an investigation of why this prosecutorial error occurred and make sure that such *Brady* violations do not continue." See: *United States v. Tavera*, 719 F.3d 705, 708 (6th Cir. 2013).

*Brady* violations persist, in part, because few prosecutors face any consequences for failing to disclose evidence. The Morton case is an exception, as the former prosecutor in that case, Ken Anderson, who later became a Williamson County district judge, was arrested in 2013 and charged with criminal contempt, fabricating evidence and other offenses related to his misconduct in Morton's prosecution and wrongful conviction.

In a September 2013 letter to Texas Governor Rick Perry announcing his resignation from the bench, Anderson made no mention of the Morton case, blandly stating that "[t]here comes a time when

every public official must decide that it is time to leave public office."

Anderson, who also surrendered his law license, pleaded no contest and was sentenced to 10 days in jail and a \$500 fine on November 8, 2013. He served a total of 5 days, which pales in comparison to the 8,989 days that Morton spent in prison. In an editorial, *The New York Times* called Anderson's sentence "insultingly short."

Morton received almost \$2 million in compensation plus a lifetime annuity from the State of Texas for his wrongful conviction; following a Court of Inquiry ordered by the Texas Supreme Court, Williamson County paid approximately \$500,000 in legal costs and fees. The Michael Morton case is described in detail in a book titled *Getting Life: An Innocent Man's 25-Year Journey from Prison to Peace*, published in July 2014.

Most prosecutors, however, manage to evade responsibility for *Brady* violations, even in cases that are highly publicized – such as the botched prosecution of the late Ted Stevens, a former U.S. Senator.

In 2008, Stevens was found guilty of receiving illegal financial benefits and fail-

ing to report them. His conviction was set aside before sentencing and the indictment dismissed after the Department of Justice (DOJ) admitted federal prosecutors had withheld exculpatory evidence related to statements made by the chief witness at Stevens' trial.

U.S. District Court Judge Emmet G. Sullivan granted the government's motion to dismiss in April 2009, and appointed a special prosecutor "to investigate and prosecute such criminal contempt proceedings as may be appropriate" against the AUSAs involved in the Stevens prosecution.

"In nearly 25 years on the bench, I've never seen anything approaching the mishandling and misconduct that I've seen in this case," Judge Sullivan stated.

Although the special prosecutor found "the evidence establishes that this misconduct was intentional," it was also legally insufficient to support a conviction under the federal criminal contempt statute, 18 U.S.C. § 401. The reason? None of the discovery orders issued by Judge Sullivan "specifically directed the prosecutors" to disclose the *Brady* evidence at issue. Absent a clear order from the court, it could not be



## Need Post Conviction Relief?

Contact [helpmetimberwolf@googlegroups.com](mailto:helpmetimberwolf@googlegroups.com)

**Timberwolf Litigation and Research Services LLC**  
Specializes in Federal Post Conviction Relief

**All Work done under supervision of licensed counsel.**

- |                                                                                             |                                                                                            |
|---------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| ★ First direct appeal briefs                                                                | ★ Petitions for rehearing                                                                  |
| ★ Motions for return of personal property (rule 41)                                         | ★ Writs of Certiorari to the U.S. Supreme Court                                            |
| ★ Challenges to conditions of supervised release                                            | ★ Clemency and pardon applications                                                         |
| ★ Sentence Reduction Motions and Memorandums under 28 USC 2241, 2255, and 18 USC 3582, 3583 | ★ Challenges to constitutionality of Federal and State statutes and reporting requirements |
| ★ Background research and FOIA requests                                                     | ★ Institutional medical malpractice claims                                                 |

For more information, call toll free 1-855-712-5276  
if you can't call toll free call (260) 243-5649

If you can't call at all, then write us at  
Timberwolf Litigation and Research Services LLC  
402 North Wayne Street, Suite B, Angola, Indiana 46703

**You don't have to do it alone!.....Run with the Pack !**  
attorneys, paralegals, researchers and consultants dedicated to serving your legal needs.



## Prosecutorial Misconduct (cont.)

proven that the prosecutors' actions rose to the level of contempt, notwithstanding that disclosure of exculpatory evidence is a basic tenet of our criminal justice system.

Sadly, Stevens, who had steadfastly maintained his innocence, lost his bid for reelection shortly after he was convicted and died in a plane crash in 2010, the year after the charges were dismissed. The federal prosecutors accused of withholding evidence, Joseph W. Bottini and James A. Goeke, were suspended without pay for 40 days and 15 days, respectively. [See: *PLN*, March 2013, p.38]. Ironically, their suspensions were overturned in April 2013 after an administrative judge found the Justice Department had violated its own procedures. A third prosecutor involved in the Stevens case, Nicholas Marsh, committed suicide.

Prosecutorial misconduct occurs for a variety of reasons, but with respect to *Brady* violations, an inadequate oversight system to detect, review and sanction such abuses may encourage some prosecutors to take their chances by withholding evidence. Further, although *Brady* and its progeny decisions have routinely bemoaned the unfairness that results when prosecutors deprive a defendant of favorable evidence, post-trial appellate reviews of such violations focus on the effect the evidence might have had on the verdict, requiring the defendant to demonstrate a "reasonable probability" of a different outcome had the evidence been disclosed – a fairly subjective standard.

As stated by the U.S. Supreme Court, the "materiality inquiry is not just a matter of determining whether, after discounting the inculpatory evidence in light of the undisclosed evidence, the remaining evidence is sufficient to support the jury's conclusions. Rather, the question is whether 'the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.'" See: *Strickler v. Greene*, 527 U.S. 263, 282 (1999) (prosecution's failure to produce notes of conflicting statements made by eyewitness deemed insufficient to constitute *Brady* violation in death penalty case) (citations omitted).

With our results-oriented judiciary, the higher the stakes the smaller the likelihood of reversal for *Brady* violations.

As such, from an adversarial point of view, the temptation for prosecutors to withhold evidence can be an obvious one, as the worst-case scenario is usually a retrial and not dismissal of the charges, and sanctions are unlikely. Simply put, the manner of review of *Brady* violations carries little disincentive for a prosecutor who puts winning a conviction above their ethical obligation to seek justice.

"There is an epidemic of *Brady* violations abroad in the land," Ninth Circuit Court of Appeals Chief Judge Alex Kozinski wrote in a dissenting opinion in December 2013. "Only judges can put a stop to it," he added. See: *United States v. Olsen*, 737 F.3d 625, 626 (9th Cir. 2013).

On August 21, 2013, a federal district court in Pennsylvania granted a death row

prisoner's petition for writ of habeas corpus and vacated his conviction and death sentence due to *Brady* violations by the prosecution that included withholding exculpatory evidence. See: *Dennis v. Wetzel*, 966 F.Supp.2d 489 (E.D. Pa. 2013) [*PLN*, July 2014, p.34].

## Connick v. Thompson: An Impossible Standard

THE STAKES ARE HIGHEST IN A CAPITAL murder case, and the now-infamous prosecution of John Thompson demonstrates just how far prosecutors are willing to go to stack the deck to obtain a conviction. The Thompson case is a prime example not only of how the justice system permits abuses by prosecutors, but also of how little recourse is accorded to victims of such misconduct. Indeed, even people like Thompson, who came within days of being executed for a crime he did not commit, appear to have no means of obtaining justice when prosecutors abuse their considerable power.

### The Criminal Case

In December 1984, someone shot and killed Raymond T. Liuzza, Jr., the son of a prominent New Orleans business executive. One person who witnessed the incident described the shooter as a six-foot-tall black man with "close cut" hair.

Three weeks later, in another part of New Orleans, a man attempted to rob three siblings at gunpoint. During a scuffle, the perpetrator left his blood on the pants leg of one of the victims; a test on a swatch from the pants revealed that the robber's

## CALIFORNIA LIFER NEWSLETTER

**Published by Life Support Alliance**

CLN: Comprehensive newsletter mailed every 8 weeks containing state and federal cases, parole board news, statistics, legislation and articles of interest to Lifers and their supporters.

### CLN SUBSCRIPTIONS

Prisoners .... \$30 per year (or 100 stamps)  
Others .... \$90 per year

**Make checks payable to LSAEF**

(Life Support Alliance Education Fund)

**CLN, P.O. Box 277, Rancho Cordova, CA. 95741**

*CLN no longer provides copy service of legal cases, articles or news and materials from the Internet.*

[www.lifesupportalliance.org](http://www.lifesupportalliance.org) (916) 402-3750

### Photo Tryst

PO Box 103

Chapmansboro TN 37035

### Quality Pics of Quality Babes

All catalogs 450 full color pics

Summer 2013 free with SASE

All other catalogs \$4 or 10 forever stamps, and ship with a coupon for 5 free pics with your minimum order of 10

Winter 2014

Nudity)

Spring 2014

All Nude #1 (you see it all)

Topless #1 (contains frontal

Our next general (season) catalog free with each order

You can deposit funds with us and order your pics "on account"

We accept institutional checks, personal checks from

friends and family, and money orders

Stamp orders are only with stamp coupons obtained with regular orders

Oregon and Utah consistently deny our catalogs so we cannot do business there. Sorry



blood was Type B.

John Thompson and Kevin Freeman were arrested and charged with the Liuzza murder. Their arrest came after Richard Perkins, who knew Thompson, approached the Liuzza family seeking a \$15,000 reward they had publicized for information about the crime. Freeman fit the eyewitness' six-foot, close-cut hair description; his nickname was "Kojak" because he kept his head nearly shaved. Freeman would later become a key prosecution witness at Thompson's first trial for the murder of Liuzza.

After Thompson's arrest, his photo (with a large afro) was displayed in the newspaper. One of the armed robbery victims saw the picture and said Thompson was the one who had robbed them; they later picked the same photo out of a photographic lineup. Thompson was then indicted for the robbery. During the investigation of the armed robbery, a crime scene technician wrote that the prosecution "[m]ay wish to do a blood test."

District Attorney Harry F. Connick had appointed his third-in-command, Eric Dubelier, to prosecute the high-profile Liuzza case, and later named him special

prosecutor in the armed robbery case. Assistant district attorneys Jim Williams and Gerry Deegan were also appointed to the prosecutorial team.

In a "strategic move," the prosecutors successfully petitioned the Orleans Parish Criminal Court to switch the order of the trials so Thompson would be tried for the armed robbery first (even though the robbery had occurred after Liuzza's murder). Two days before the trial, the bloody swatch from the robbery was identified as being blood Type B; Thompson's attorneys were not advised of the test results. On the first day of trial, Deegan checked out the bloody swatch from the evidence file and it was never returned.

The strategic value of reversing the order of the trials was two-fold. A robbery conviction would likely keep Thompson from testifying on his own behalf at the later murder trial, because the conviction would be disclosed to the jury if he testified. Further, the robbery conviction could be used to increase the likelihood of a death sentence in the murder case.

The blood test evidence was not mentioned at the armed robbery trial. Based

"solely on the descriptions" of the robber by the three victims, Thompson was convicted and sentenced to 49.5 years in prison without parole – the maximum sentence.

During pretrial proceedings in the armed robbery case, Thompson's attorney had filed a *Brady* motion seeking access to all evidence "favorable to the defendant" and "material and relevant to the issue of guilt and punishment," as well as "any results or reports [of] scientific tests or experiments." When Thompson's attorney went to inspect the evidence he was unaware of the bloody swatch, which had been checked out by the prosecution.

A month later, Thompson was tried for the Liuzza murder.

As with the blood evidence at the armed robbery trial, the prosecutors did whatever they could to prevent Thompson from accessing evidence helpful to his defense in the murder case. First, they did not disclose available audiotapes of Perkins' calls to the Liuzza family seeking a reward, which would have rebutted the prosecution's claim that there was no "direct evidence" that reward money had motivated any of the witnesses.

# SPORTZZBUZZ

(pronounced SPORTS-BUZZ!)

THE OFFICIAL PROVIDER OF SPORTS SCORES, LINES, AND MUCH MORE FOR FEDERAL INMATES.

GET UP-TO-DATE SPORTS INFORMATION SENT DIRECTLY TO YOUR CORRLINKS EMAIL FOR ONLY

**\$5 / MONTH\***



ADD [INFO@SPORTZZBUZZ.COM](mailto:INFO@SPORTZZBUZZ.COM) TO YOUR CORRLINKS EMAIL  
SUBSCRIPTION LIST FOR MORE INFORMATION AND A FREE SAMPLE!  
\*\$5 MONTHLY RATE AVAILABLE ONLY ON 12 MONTH SUBSCRIPTION  
FANTASY FOOTBALL STATS AVAILABLE FOR A SMALL ADDITIONAL FEE

## Prosecutorial Misconduct (cont.)

Second, the prosecutors withheld a police report that could have contradicted Freeman's trial testimony, depriving Thompson of key impeachment evidence.

Third, they withheld police reports of the initial eyewitness' description of the shooter as being six-foot with "close cut" hair. This would have provided Thompson with much-needed information suggesting that Freeman, a.k.a. "Kojak," had committed the crime.

Thompson was found guilty of first-degree murder. Since he was already serving a *de facto* life sentence for the armed robbery charge, the prosecution urged that "the only way to punish him for murder was to execute him." The jury sentenced him to death.

Fourteen years after his murder conviction, Thompson had exhausted all of his appeals. His execution was scheduled for May 20, 1999. In April, in a last-ditch effort to save Thompson's life, an investigator once again reviewed the evidence file and found a microfiche copy of the crime lab report containing the blood type from the evidence in the armed robbery case. Thompson was then tested – his blood was Type O – and after his attorneys presented this evidence to Connick's office, a stay of execution was ordered.

In the ensuing investigation, it was learned that in 1994, prosecutor Deegan had confessed to a former colleague that he had "intentionally suppressed" the blood type evidence. Deegan made the confession only after learning he had cancer, and he later died. The colleague, Michael Riehlmann, himself a former Orleans Parish

prosecutor, did not tell anyone about the confession until after Thompson's stay of execution. Three other prosecutors were aware of the blood evidence but did not disclose it to defense counsel.

Thompson's conviction in the armed robbery case was vacated upon the state's motion, and he was not retried.

Connick then convened a grand jury, ostensibly to consider charges related to the concealment of the blood type evidence. He terminated the grand jury after one day, however, leading John Glas, the assistant district attorney prosecuting the concealment case, to resign in protest.

Thompson filed a motion for post-conviction relief on the murder charge and, in 2001, his death sentence was changed to life imprisonment on the grounds that the wrongful armed robbery conviction had been used as evidence in the capital sentencing proceedings. The Louisiana Court of Appeals reversed Thompson's murder conviction in 2002 but did not address the merits of his *Brady* violation claims. See: *State v. Thompson*, 825 So.2d 552 (La. Ct. App. 2002).

Not satisfied with this outcome, District Attorney Connick retried Thompson for the Liuzza murder. This time Thompson testified in his own defense and was able to use at least ten new pieces of evidence that had not been available during the first trial. They included the police reports describing the assailant's "close cut" hair, reports about informant Perkins' meeting with the Liuzza family and seeking a reward, audio tapes of those meetings and inconsistent statements made by Freeman, the probable shooter.

Additionally, numerous other witnesses testified who had not been disclosed by the police at the first trial. Even considering

transcripts of Freeman's original trial testimony – he had been killed in the interim – the jury deliberated only 35 minutes before returning a verdict of not guilty. Thompson was then released from prison, having served more than 18 years.

### *The Civil Case*

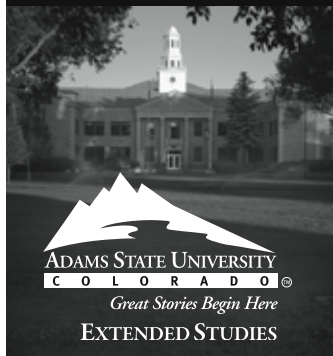
In 2003, Thompson filed a civil rights action under 42 U.S.C. § 1983, alleging that Connick, other officials in his office and the District Attorney's office itself had violated his constitutional rights. He alleged state law claims, including malicious prosecution, in addition to § 1983 claims of wrongful suppression of evidence and conspiracy.

Prior to a February 2007 trial, all claims were dismissed except one alleging that Connick and the District Attorney's office were liable for having an unconstitutional *Brady* policy and being "deliberately indifferent" to Thompson's rights and the need to adequately train and supervise employees making *Brady* determinations. The jury found for Thompson, awarding him \$14 million in damages, and the district court awarded around \$1 million in attorney fees. [See: *PLN*, Oct. 2007, p.22].

The Fifth Circuit affirmed the judgment in December 2008. In doing so, the appellate court rejected Connick's argument that establishing "deliberate indifference" requires evidence of a pattern of misconduct. The Court of Appeals held that deliberate indifference could be established when "the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need."

The Fifth Circuit granted rehearing

## Earn an Adams State University Degree via Correspondence Courses Through the Mail



- No internet access required
- Degree options available — Associate of Arts or Science, Bachelor degrees in English/Liberal Arts, Business Administration, HAPS/Political Science, HAPS/History, Interdisciplinary Studies, Sociology, Master Degree in Business Administration, and Paralegal Certificate Program
- Affordable tuition — \$165/semester hour for undergraduate correspondence courses, \$350/semester hour for Master level correspondence courses. Payment options include cashiers check, credit card, money order or verified personal check.
- Accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools (the highest level of post-secondary accreditation available)
- 20+ years of experience serving incarcerated students
- Veteran friendly/GI Bill accepted
- FREE unofficial evaluation of previously earned credits
- Student advisor with over 21 years working with incarcerated individuals

### Prison College Program

Call or write to receive additional information:

800-548-6679

Adams State University

PLN Inquiry,

Suite 3000

208 Edgemont Blvd.

Alamosa, CO 81101

*en banc* and affirmed the judgment in an evenly-divided decision. In four separate opinions, the appellate court disputed whether Thompson could establish municipal liability on a failure-to-train theory based on the “single” *Brady* violation in his case, without proving a prior pattern of similar violations that is typically required to find municipal liability – although the court acknowledged “that Thompson has suffered a horrible wrong inflicted by agents of the government.” See: *Thompson v. Connick*, 578 F.3d 293 (5th Cir. 2009).

The U.S. Supreme Court granted certiorari and reversed the Fifth Circuit in a 5-4 decision, overturning the \$14 million jury award. See: *Connick v. Thompson*, 131 S.Ct. 1350 (2011) [PLN, Aug. 2011, p.30].

In sum, the Court reversed the judgment on the basis that Thompson failed to prove that Connick had actual or constructive notice of, and was therefore deliberately indifferent to, a need for adequate *Brady* training. A “pattern of similar constitutional violations” by untrained employees was necessary to demonstrate deliberate indifference for purposes of a failure-to-train claim. It mattered not that Connick and his

office had been taken to task on numerous occasions for *Brady* violations – even by the Supreme Court itself in a previous case, *Kyles v. Whitley*, 115 S.Ct. 1555 (1995).

Nor did it matter that the District Attorney’s office had failed to offer any formal *Brady* training to its prosecutors, because, as Justice Clarence Thomas wrote, “all attorneys must graduate from law school or pass a substantive bar examination ... [t]hese threshold requirements are designed to ensure that all new attorneys have learned how to find, understand, and apply legal rules.” Formal training also was not needed because “junior prosecutors were trained by senior prosecutors who supervised them as they worked together to prepare cases for trial, and trial chiefs oversaw the preparation of the cases.”

The majority opinion indicated the Supreme Court had great confidence in the ability of prosecutors to monitor themselves and in the legal profession to punish those who violate ethical standards.

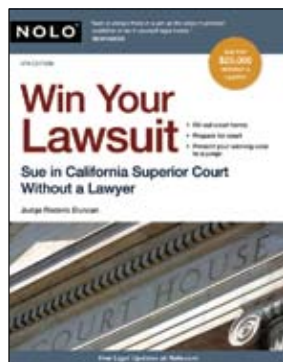
Ultimately, Thompson could not satisfy a failure-to-train theory of liability based upon a single *Brady* violation. “Thompson needed to show that Connick was on notice

that, absent additional specified training, it was ‘highly predictable’ that the prosecutors in his office would be confounded by those gray areas and make incorrect *Brady* decisions as a result.” The Supreme Court concluded he did not make that showing, and therefore reversed the judgment and jury award.

In doing so, the Court created a virtually impossible standard of proof for those who sue municipalities for prosecutorial misconduct: one must not only prove a violation of constitutional rights, but that the violation was part of a pattern of such misconduct. This effectively gives municipalities a free bite – or several free bites – at the prosecutorial misconduct apple before they can be held liable. And notably, municipalities are often the only defendants that victims of prosecutorial misconduct can sue, since prosecutors have absolute immunity for conduct related to their prosecutorial duties.

Only one prosecutor was disciplined in Thompson’s case – Michael Riehlmann, who was cited for not reporting Deegan’s confession about suppressing the blood type evidence in a “reasonable time.” The

**NOLO**



## Win Your Lawsuit

Sue in California Superior Court  
Without a Lawyer

— \$39.99 —

Order from **Prison Legal News**  
P.O. Box 1151  
Lake Worth, FL 33460  
561-360-2523

Add \$6 shipping for orders under \$50

[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

## WELCOME TO KRASNYA BABES & KRASNYA STUDS WORLD

TENS OF THOUSANDS OF THE HOTTEST AND MOST SCANDALOUS BABES & DUDES FOUND ON THE PLANET. EACH CATALOG PAGE HAS 120 BEAUTIFUL GIRLS OR BOYS POSING JUST FOR YOU! ORDER ONE CATALOG PAGE FOR ONLY \$4.50 OR FOR 10 U.S. FOREVER STAMPS WITH AN SASE ENCLOSED. WE WILL SEND YOU VOLUME ONE. EACH ADDITIONAL VOLUME THE SAME PRICE! WE ARE MORE THAN HAPPY TO ANSWER E-MAIL INQUIRES HOWEVER, DUE TO MAILING COST AT \$0.49 CENTS A LETTER, PLEASE ENCLOSE AN SASE WITH YOUR QUESTIONS, OTHERWISE NO REPLIES!

### WHAT ABOUT OUR PRICES AND POLICIES

COLOR PRINTS ON 4x6 GLOSSY PHOTO PAPER AS LOW AS \$0.35 CENTS PER PRINT ON ORDERS OVER 500 SHIPPED ACCORDING TO POLICY:

25 PICTURES PER ENVELOPE EVERY 24 HOURS. S&H \$2.00 PER ENVELOPE.

\*\*\*\*\*METHOD OF PAYMENT\*\*\*\*\*  
U.S. POSTAL SERVICE MONEY ORDERS-STATE & FEDERAL CORRECTIONAL INSTITUTIONAL CHECKS PAYABLE ONLY TO: KRASNYA L.L.C.

OUR SEASONAL SPECIALS MEAN A KICKOFF OF SAVINGS!

**\$24.95 S&H FREE**  
FOR GRAB BAG OF 50 PHOTOS  
FROM ALL OUR CATALOGS  
SPECIFY RACE AND MAIN  
AREA OF YOUR INTERESTS  
WE WILL PICK SELECTION FOR YOU  
BONUS 1 COLOR CATALOG PAGE OF  
120 BABES (NUDE OR BOP-FRIENDLY)

3 BRAND NEW FLAT BOOKS OF  
20 U.S. FOREVER STAMPS  
FOR GRAB BAG OF 45 PHOTOS  
FROM ALL OUR CATALOGS, SPECIFY RACE  
AND MAIN AREA OF YOUR INTERESTS  
WE WILL PICK SELECTION FOR YOU  
BONUS 1 COLOR CATALOG PAGE OF 120 -  
(BABES OR STUDS-NUDE OR BOP-FRIENDLY)  
PLEASE INCLUDE 6 FOREVER STAMPS  
WITH YOUR ORDER FOR S&H

KRASNYA BABES HAS SPRUNG SALE!  
FREE SAMPLE CATALOG FROM KRASNYA!  
120 BABES IN EACH CATALOG  
ENCLOSE ONE SASE WITH TWO FIRST CLASS  
STAMPS! 1 CATALOG PER CUSTOMER  
PLEASE SPECIFY MALE OR FEMALE BABES  
NUDE OR BOP-FRIENDLY

FOR KRASNYA CLIENTS WHO WORK THE YARDS;  
HAVE WE GOT A GREAT OPPORTUNITY FOR YOU...

MR. HUSTLE GRAB BAG BARGAIN DAYS  
ONLY \$0.25 CENTS PER BABE/PRINT  
5 GRAB BAG MINIMUM PURCHASE REQUIRED  
\$2.00 SHIPPING AND HANDLING PER BAG  
25 AWESOME BABES PER BAG AT ONLY \$6.25  
YOU MUST BUY AT LEAST 5 GRAB BAGS  
THIS\*\*\*GRAB BAG BARGAIN\*\*\* IS NOT GOING TO  
BE OFFERED AGAIN THIS YEAR.  
SO STOCK UP NOW!

AS YOU KNOW YOU GET AN ARRAY OF  
25 GORGEOUS BABES  
YOU CAN ONLY CHOOSE EITHER MALES OR  
FEMALES. ALL NUDES OR BOP SAFE  
YOU MAY WANT TO SIT DOWN  
FOR THIS BONUS BARGAIN!  
OUR BABES CATALOGS SPECIAL OF THE DECADE  
— 5 COLOR CATALOGS FOR \$6.00 —  
— 10 COLOR CATALOGS FOR \$12.00 —  
— 15 COLOR CATALOGS FOR \$18.00 —  
— 20 COLOR CATALOGS FOR \$24.00 —  
OUR CATALOGS SPECIAL AVAILABLE WHEN YOU  
PURCHASE THE 5 GRAB BAG MINIMUM!  
THIS PRICE INCLUDES FREE SHIPPING ON THE  
CATALOGS BECAUSE OF SHIPPING TERMS ALL  
CATALOGS SOLD IN MULTIPLES  
OF 5 FOR \$6.00 ONLY.  
YOU CHOOSE EITHER MALE OR FEMALE CATA-  
LOGS AND IF YOU WANT NUDE OR BOP SAFE!!

KRASNYA L.L.C. P.O. BOX 32082, BALTIMORE, MD 21282

EMAIL & CORRLINKS REQUESTS ACCEPTED AT:  
**KRASNYABABES@HOTMAIL.COM**



## Prosecutorial Misconduct (cont.)

Louisiana Attorney Discipline Board recommended a six-month suspension but the state Supreme Court imposed only a public reprimand.

Asked by a *Huffington Post* reporter whether any prosecutors had ever said they were sorry for his wrongful conviction, Thompson responded, "Sorry? For what? You tell me that. Tell me what the hell would they be sorry for. They tried to kill me. To apologize would mean they're admitting the system is broken.... That everyone around them is broken. It's the same motherfucking system that's protecting them."

Less than a year after the Supreme Court's ruling in *Connick v. Thompson*, the Court found *Brady* violations by the Orleans Parish District Attorney's Office in another prosecution. In that case, the Court reversed the murder convictions of a defendant based on claims that prosecutors had withheld material evidence. See: *Smith v. Cain*, 132 S.Ct. 627 (2012).

### ABA Model Rule 3.8

THE AMERICAN BAR ASSOCIATION'S Model Rules of Professional Conduct are widely recognized as the touchstone of ethical behavior for attorneys. Model Rule 3.8, "Special Responsibilities of a Prosecutor," has been adopted by 49 states, Guam, the U.S. Virgin Islands and the District of Columbia. California is the only state to not adopt a similar rule.

While the ABA's Model Rules apply equally to all attorneys, Rule 3.8 is notable because it's the only rule specific to prosecutors. As such, most commentators view Rule 3.8 as

the starting point for prosecutorial ethics.

Rule 3.8 defines "special" ethical duties applicable to prosecutors, including the following, among others. The Rule provides that prosecutors shall:

- Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

- Make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

- Except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused;

- When informed of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall promptly disclose that evidence to an appropriate court or authority and, if the conviction was obtained in the prosecutor's jurisdiction, promptly disclose that evidence to the defendant unless a court authorizes delay, and undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit; and

- When a prosecutor knows of clear

and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

Model Rule 3.8 imposes disclosure obligations that are "separate from and broader than the *Brady* constitutional standards," as the ABA noted in an amicus brief filed with the Supreme Court in *Smith v. Cain*.

With this in mind, Rule 3.8 would seem to require prosecutors to adhere to a heightened standard of conduct. Yet this is only in theory because, as a 2011 *Yale Law Journal Online* article notes, the Rule's "vague terminology undermines its efficacy and enforceability in practice."

For example, "Rule 3.8's prescriptive force is [] greatly diminished by its failure to address many important aspects of the prosecutorial function," including plea bargains. More than 90% of federal criminal prosecutions are resolved through guilty pleas [see: *PLN*, Jan. 2013, p.20]; however, Rule 3.8 fails to address prosecutorial conduct during plea negotiations.

"In sum, Model Rule 3.8 promises on its face more than it delivers in practice," the *Yale Law* article concludes. "While there are many instances of prosecutorial misconduct that clearly fall within its ambit, the Rule fails to address some of the more significant aspects of the prosecutor's justice-seeking role."

Even if flawed, Rule 3.8 is still one of the few existing tools for curbing prosecutorial misconduct. Indeed, Innocence Project co-founder Barry Scheck and former federal judge Nancy Gertner co-authored an article recommending that defense attorneys specifically cite Model Rule 3.8

## AFFORDABLE INMATE CALLING SERVICES

*Keeping you Connected while saving you Money!*

**NO hidden fees. One flat monthly rate • NO setup fee with referral information  
NO charges to add/ remove numbers • NO transfer fees • 100% BOP Compliant!**

**Additional holiday minutes, no extra charge.**

**2 vanity numbers for \$15 + tax /month, additional # for \$1.50 each**

**Ask us about our REFERRAL PROGRAM!**

**Contact Us:**

**Inmates: inmates@aicsllc.net • 303-214-0097**

**Families: www.aicsllc.net • billing@aicsllc.net • 866-645-9593**



when filing pretrial motions for disclosure of evidence, accompanied by a proposed order mandating such disclosures.

Yet in spite of Rule 3.8, state bar requirements, and *Brady* and other case law related to prosecutorial misconduct, abuses by prosecutors continue to occur.

### The Trayvon Martin Case

MOST PEOPLE ARE FAMILIAR WITH THE Trayvon Martin case, in which Florida neighborhood watch captain George Zimmerman was prosecuted for shooting and killing Martin, 17, as the teenager was walking back to his house. Zimmerman was acquitted of murder and manslaughter charges on July 13, 2013.

Not as many people are aware of allegations of prosecutorial misconduct raised in connection with the Trayvon Martin case.

According to a lawsuit filed by Ben Kruidbos, a former employee of Florida State Attorney Angela Corey, who oversaw Zimmerman's prosecution, he was fired by Corey after testifying on behalf of Zimmerman in regard to *Brady* material he believed should have been disclosed. Kruidbos, terminated from his job as director of information technology for the State Attorney's office, testified at a pretrial hearing that he was "shocked" that prosecutors had not turned over to Zimmerman's attorneys evidence of photos and text messages he had recovered from Martin's cell phone.

The photos included images of a

pile of jewelry on a bed, underage nude females, marijuana and a hand holding a semiautomatic weapon, plus a text message concerning a gun transaction. They appeared to fall under Florida's *Brady*-based disclosure rules, and Kruidbos said he emailed them to Corey's lead prosecutor in the Martin case. Concerned that the prosecution had not shared the photos and texts with the defense team, Kruidbos directed his attorneys to contact Zimmerman's lawyers concerning the withheld evidence. The defense finally received the evidence shortly before Zimmerman's trial began.

While the photos were ultimately ruled inadmissible by the judge because there was no proof that Martin himself took the pictures, the failure to disclose that evidence prompted Zimmerman's attorneys to move for sanctions against Corey and the prosecution team. Florida Bar rules require that the prosecutor "make timely disclosure of all evidence known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense."

After contacting Zimmerman's attorneys, Kruidbos was initially placed on leave and then fired, with his termination

letter accusing him of "deliberate, willful and unscrupulous actions." He then filed a \$5 million whistleblower suit against the State Attorney's office.

Corey filed a counterclaim against Kruidbos in February 2014, stating he had been terminated for violating policy by deleting files and sharing information during a pending case. See: *Kruidbos v. Corey*, Fourth Judicial Circuit Court (FL), Case No. 16-2013-CA-007407.

Kruidbos' lawsuit alleges conduct that appears to constitute a clear violation of the prosecution's *Brady* obligation to share evidence with the defense. However, Zimmerman's legal team announced in March 2014 that it was dismissing the motion for sanctions against Corey and lead prosecutor Bernie de la Rionda.

Kruidbos' suit remains pending. His attorney, Wesley White, a former employee of the State Attorney's office himself, said Kruidbos' firing sent a message to other employees to not disclose wrongdoing by prosecutors. "If they do speak to an attorney, then they are dead," he remarked. "[The] State Attorney's office will do whatever is necessary to not only terminate them, but

## Corcoran Sun

Full Color Prison Yard Monthly  
News • Entertainment • Resources

**3 Month Special Subscription**  
**\$5 or 20 FCS Stamps**

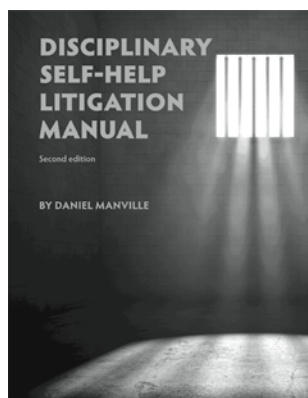
**NOW 20 PAGES**

Expanded full color format with exciting episodes of thrilling novels and sexy pics. Many how-to articles on writing, art, music and health. Filled with entertainment: puzzles, trivia, jokes, poetry... Submit your writing, art, poetry etc. See your submission, name and contact info in print.

**Special 6-Issue Subscription (\$10 or 40 FCS stamps)**  
**Special Year Subscription (\$20 or 80 FCS stamps)**  
NEW Books/Sheets/Strips ONLY No singles on special please

**Freebird Publishers**  
 Box 541, North Dighton, MA 02764  
[www.FreebirdPublishers.com](http://www.FreebirdPublishers.com)  
[Diane@FreebirdPublishers.com](mailto:Diane@FreebirdPublishers.com)





### ***Disciplinary Self-Help Litigation Manual, Second Edition, by Dan Manville***

By the co-author of the *Prisoners' Self-Help Litigation Manual*, this book provides detailed information about prisoners' rights in disciplinary hearings and how to enforce those rights in court.

Available in November 2014 from Prison Legal News Publishing. **\$49.95**, shipping included

#### **Order by mail, phone or on-line.**

By: ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name

DOC/BOP Number

Institution/Agency

Address

City  State  Zip

**Prison Legal News • PO Box 1151, Lake Worth, FL 33460**  
**Tel. 561-360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)**

## Prosecutorial Misconduct (cont.)

destroy their reputations in the process.”

### Prosecutorial Misconduct in Miami

AT THE SOUTHERN END OF FLORIDA, prosecutorial misconduct is alive and well in the federal courts, too. Several high-profile criminal cases in the U.S. District Court for the Southern District of Florida involving Assistant U.S. Attorney Andrea G. Hoffman have come undone due to her misconduct; as a result, several Columbian nationals charged in large-scale, multi-national drug investigations are headed home.

Fifty-six Columbians were arrested in multiple investigations – Operation Seven Trumpets, Operation Under the Sea and Operation BACRIM (Bandas Criminales) – that resulted in the seizure of 20 tons of cocaine and heroin, millions of dollars in cash, 21 airplanes and even 12 submarines. The arrests were hailed at a press conference that included the President of Columbia. Due to Hoffman’s wrongdoing, some of those cases have fallen apart.

First, defendants John Winer and Jose Buitrago no longer faced sentences of life without parole after U.S. District Court Judge Marcia Cooke held that Hoffman had withheld key evidence from the defense, including cash payments made by the DEA to Columbian officers. After Hoffman changed her story about her knowledge of the payments and offered a tepid apology, Judge Cooke said she believed the government knew about the payments but did not disclose that information to defense counsel.

“The prosecutor was ethically and legally bound to turn the information

over,” she stated in May 2013. “This does not make sense to me. This is all you do. Answer this: Why does the government get a pass?”

Hoffman had no answer. A deal was then struck for Winer and Buitrago to plead guilty to a lesser conspiracy charge; they were sentenced to 36 months in prison with two years’ pretrial credit, and subsequently released.

Operation Seven Trumpets suffered other setbacks due to Hoffman’s misconduct. Defendant Daniel Bustos had arranged to purchase “inside information” from another defendant in the drug case, Fabian Cruz, that he could use to testify against Winer and Buitrago in exchange for a lighter sentence. Hoffman had been prepared to let Bustos testify until the defense team uncovered the scheme and Judge Cooke ordered Hoffman to produce a letter, which she had not disclosed to the defense, indicating that Bustos was buying information from Cruz.

Further, Hoffman was forced to drop charges against defendant Carlos Ortega-Bonilla on August 31, 2013 after investigators proved he was not a participant in the case, notwithstanding Hoffman’s argument that she had a secret witness implicating him.

Another defendant, William Gil-Perenguez, was also freed after a fellow prisoner, Neixi Garcia Lamela, told him “DEA agents and Hoffman pressured me to implicate you, but I refused because I knew I would be fabricating testimony to implicate an innocent person.” Federal judge Donald Graham later freed Gil-Perenguez after finding that he had been wrongly identified in wiretaps. Gil-Perenguez filed suit, but the Eleventh Circuit upheld the dismissal of his complaint because the claims arose in a foreign country. See: *Gil-Perenguez v. United States*, 49 Fed.Appx. 781 (11th Cir. 2011), *cert. denied*.

Charges against two other Columbians, Luis Alfonso Rubiano Ramos and Jose Mejia Cortez, also were dismissed.

In an unrelated earlier case involving an award of \$601,795.88 in attorney fees and costs against the federal government, U.S. District Court Judge Alan S. Gold publicly reprimanded Hoffman and another prosecutor, Sean Paul Cronin, for “acting vexatiously and in bad faith” in prosecuting Dr. Ali Shayan, who was acquitted of federal charges of overprescribing medications.

“These events are profoundly disturbing,” wrote Judge Gold. “They raise troubling issues about the integrity of those who wield enormous power over the people they prosecute.... Our system of criminal justice cannot long survive unless prosecutors strictly adhere to their ethical obligations; avoid even the appearance of partiality, and directly obey discovery obligations and court orders.”

The public reprimands and award of fees and costs were later reversed by the Eleventh Circuit, which found the district court had violated Hoffman and Cronin’s due process rights. See: *United States v. Shayan*, 661 F.Supp.2d 1289 (S.D. Fla. 2009), *vacated*, 652 F.3d 1297 (11th Cir. 2011), *cert denied*.

Hoffman remains employed in the appellate division of the U.S. Attorney’s office for the Southern District of Florida.

### Appellate Ruling in Lopez-Avila

THE NINTH CIRCUIT COURT OF APPEALS had strong words about prosecutorial misconduct in a criminal case involving Aurora Lopez-Avila, a Mexican national and low-level drug offender. The Assistant U.S. Attorney in that case, Jerry R. Albert, was found to have intentionally misrepresented testimony from a plea hearing during Lopez-Avila’s trial. Circuit Judge Donald Walter told a news reporter that he was “surprised to hear” Albert was still a prosecutor, but apparently not surprised enough to do much about it – even though he said Albert’s conduct “was the worst [he’d] ever seen from an Assistant U.S. Attorney.”

The Court of Appeals issued an

## TYPING

### SERVICES

Provided since 1998

Specifically designed, with special rates for the incarcerated person.

Black / Color Printing and Copying

SEND A SASE FOR A “FREE” PRICE LIST AND MORE INFORMATION TO:

LET MY FINGERS DO YOUR TYPING

Sandra Z. Thomas (dba)

P O Box 4178

Winter Park, Florida 32793-4178

Phone: 407-579-5563

Special Offer: \$2.00 off first order.

Special offer void after: 12/31/2014

# got pen pals?

get some

PRISON INMATES ONLINE #PLN AD

8033 W Sunset Blvd #7000  
Los Angeles CA 90046

Send SASE to:

for free brochure.

amended decision after the U.S. Attorney's office asked the Court to remove Albert's name from its original ruling. In the amended opinion, the appellate court noted: "The Department of Justice has an obligation to its lawyers and to the public to prevent prosecutorial misconduct. Prosecutors, as servants of the law, are subject to constraints and responsibilities that do not apply to other lawyers; they must serve truth and justice first. Their job is not just to win, but to win fairly, staying within the rules. That did not happen here.... When a prosecutor steps over the boundaries of proper conduct and into unethical territory, the government has a duty to own up to it and to give assurances that it will not happen again. Yet, we cannot find a single hint of appreciation of the seriousness of the misconduct within the pages of the government's brief on appeal." (citations omitted).

Regardless, "it is not our task to conduct a thorough investigation of Albert's conduct for disciplinary purposes," the Ninth Circuit wrote. "However, we do not need a record greater or different than we have here to determine that Albert should not have

misrepresented the transcript's question. Accordingly, we are in a position to do three things to ensure that this matter is handled properly following this disposition: we remand the case to allow the district court to consider dismissal with prejudice of the indictment as an exercise of its supervisory powers and to prevent other misconduct in the future; we instruct the district court to consider disciplinary options also pursuant to its supervisory powers; and we note that the Office of Professional Responsibility within the Department of Justice has the responsibility of investigating allegations of misconduct by federal prosecutors." See: *United States v. Lopez-Avila*, 678 F.3d 955 (9th Cir. 2012).

Following remand, the district court dismissed all charges against Lopez-Avila. Noting that "dismissal under the court's supervisory powers for prosecutorial misconduct requires (1) flagrant misbehavior and (2) substantial prejudice," the district court found dismissal was appropriate due to Albert's "direct misrepresentation to the court."

Albert subsequently received a reprimand from the state presiding disciplinary judge on June 17, 2013, and was assessed

\$1,200 for the costs of the disciplinary proceeding. He is no longer employed by the U.S. Attorney's office.

### New Orleans Prosecutors Resign

U.S. DISTRICT COURT JUDGE KURT Englehardt set aside the convictions of five New Orleans police officers involved in the infamous Danziger Bridge killings in the aftermath of Hurricane Katrina, when officers shot and killed two unarmed citizens and wounded four others. The court took this action after it was revealed that prosecutors from the local U.S. Attorney's office and the Department of Justice's home office had attempted to create adverse pretrial publicity in the case, perhaps to contaminate the jury pool, through anonymous Internet postings. They had also leaked information about the case to the news media.

One of the postings, for example, referred to New Orleans police officers as "a collection of self-centered, self-interested, self-promoting, insular, arrogant, overweening, prevaricating, libidinous fools ... who, when not having sex with each other, [are] beating, burning and abusing the citizens. Thank God for the Feds – can you imagine

## Stamps for CASH!

*Great Goods will buy your stamps!*

**70%** of Face Value: Complete books, sheets or rolls of Forever Stamps and Global Forever Stamps

**65%** of Face Value: Complete books, sheets or rolls of 49-cent stamps

**60%** of Face Value: Complete books or sheets of high denomination stamps (higher than 49-cent)

**Payment sent within 24 hours of receipt.**

**WE** WILL SEND your funds as a money order, electronic payment to anywhere you designate. Great Goods can also send payment to an approved package vendor. Please provide complete name and address of where to send your funds. Also include any required forms or special instructions.

Minimum money order of \$20. • No quantity of stamps too big. • No taped or stapled stamps. • Used, damaged, torn stamps not accepted and cannot be returned. • Stamps **MUST** be on original postal backing. • Only new stamps accepted. • No singles or partials will be accepted and they cannot be returned.

## GREAT GOODS

PO Box 2027, Bloomington IN 47402  
greatgoods2027@gmail.com

STAMPS © USPS. ALL RIGHTS RESERVED.

## Prosecutorial Misconduct (cont.)

New Orleans without a Federal presence?"

When it was discovered that some of the postings could have only come from the prosecution's files, Judge Englehardt took the extraordinary step of vacating the police officers' convictions for civil rights violations on September 17, 2013 and granting a new trial. In a 129-page opinion, he wrote that the prosecutors had violated federal regulations, court rules, bar disciplinary rules and Department of Justice policies, and said the case had been compromised by "grotesque prosecutorial misconduct." Judge Englehardt stated he would be referring the matter for disciplinary proceedings against the prosecutors and their superiors, demonstrating that at least some in the judiciary are concerned about misconduct. The prosecutors accused of the inappropriate online postings were senior litigation counsel Sal Perricone and AUSA Jan Mann. See: *United States v. Bowen*, 969 F.Supp.2d 546 (E.D. La. 2013).

In December 2012, U.S. Attorney Jim Letten, who was in charge of the New Or-

leans office, resigned due to the scandal. On July 28, 2014, the chief judge for the U.S. District Court for the Middle District of Louisiana held that Perricone (a former FBI agent) and Mann could no longer practice law in that court. Perricone has appealed the restriction, arguing that because he was on prescription medication at the time, he could not remember his inappropriate Internet comments.

Mann and Perricone left the U.S. Attorney's office in 2012 and agreed not to practice in federal court in the Eastern District, which includes New Orleans; however, they are still able to practice in other federal districts.

### A Failed Disciplinary System

PROSECUTORIAL MISCONDUCT HAS BECOME commonplace in our criminal justice system primarily because the disciplinary process purporting to address such violations is ineffectual and deeply flawed.

In *Connick*, one of the Supreme Court's justifications for prohibiting most lawsuits against municipalities for prosecutorial misconduct was that the disciplining of rogue prosecutors is already being addressed. "An attorney who violates his or her ethical obligations is subject to professional discipline, including sanctions, suspension, and disbarment," the Court stated.

Yet while it's true that prosecutors are *subject* to professional discipline, the cases in which they are actually brought before disciplinary tribunals and sanctioned are exceedingly rare. In fact, some commentators assert that such discipline isn't really occurring at all. As noted above, of the thousands of documented cases where prosecutorial misconduct was found by the courts, only a fraction have resulted in

disciplinary proceedings.

Why does the disciplinary system fail to address prosecutorial misconduct in a meaningful way? The reasons are several. First, most bar associations and other agencies charged with attorney discipline do not usually initiate investigations themselves. Rather, aggrieved members of the public or others involved in the justice system file a formal complaint that may or may not result in an investigation.

### Public Complaint Process

With respect to the public, complaints often come from those who claim to have been wronged by the prosecutor. The process for initiating complaints can be inconvenient and complex. For example, twelve states do not offer a complaint form that can be downloaded, printed and mailed. Only four states – Arizona, Minnesota, Nevada and Virginia – allow the submission of complaints online. Kentucky and New Hampshire require that a complainant file a notarized statement.

Several states go to great lengths to discourage complaints against attorneys, such as Georgia, which requires that a complainant first go through a mediation process. In other jurisdictions the complaint form itself can be complicated; adding to the confusion, the forms often are not designed for complaints against prosecutors, but rather intended for disputes between private attorneys and their clients.

Many states have statutes of limitations for complaints, some computed from the time that an incident occurred – even though prosecutorial misconduct, such as concealing evidence, may not be discovered for years or even decades. As one example, New Hampshire allows for only a two-year

\*\*\*\*7 DAY FREE TRIAL\*\*\*\*

INMATE EMAIL NEWS + SERVICES

BOP INMATES - CORRLINKS USERS

DAILY EMAILS + UPDATES ON SPORTS

NEWS, MUSIC, ENTERTAINMENT - TV

TONIGHT'S MOVIE AND SPORTS GUIDE

INFO@FORTHESCOOP.COM

P.O. BOX 90594

SAN ANTONIO, TX 78209

## MARILEE MARSHALL & ASSOCIATES, ATTORNEYS AT LAW

California State Bar Board of Specialization  
**Certified Criminal Law and  
Appellate Law Specialist**

*If you have a California case  
you need a California lawyer!*

(626) 564-1136



**State and Federal Appeals and  
Writs, Lifer Parole Hearings  
and Related Writs**

**31 years of success**

595 East Colorado Blvd

Suite 324

Pasadena, CA 91101

marileemarshallandassociates.com



period computed from the date of the misconduct, making many, if not most, incidents of prosecutorial misconduct unchallengeable through the complaint process.

While other states compute statutes of limitations from the time when the misconduct was discovered, some statutes can be confusing and conditional upon various timing events, as in North Carolina, where the statute of limitations for attorney misconduct is three years unless the violation involved "felonious criminal conduct."

Further, many states conduct disciplinary proceedings in secret, impose strict confidentiality on complainants and require preliminary investigations that dictate whether a complaint will proceed at all. Even when a violation is found, an investigation may be terminated as a matter of resource allocation. Florida advises the public that the investigation of a complaint "frequently has deterrent value in and of itself," allowing for dismissal of complaints on that basis alone. This is equivalent to saying that criminal charges serve as a deterrent even if the charges are dropped and the accused set free.

Notably, many states consider the complainant to be a witness to the disciplinary

process and not a party, leaving no recourse to appeal an adverse finding or dismissal of a complaint. Twenty-three states do not afford a complainant the right to appeal the initial dismissal of a bar investigation. And if a complaint makes it through the preliminary proceedings, formal action before a disciplinary tribunal is conducted by the bar, leaving the complainant out of the process entirely.

Further, the protracted length of formal proceedings can take its toll. In Louisiana, where John Thompson was victimized by prosecutorial misconduct, the average time between the filing of a complaint and the issuance of a decision is over three years.

### Government Oversight

As for government watchdog agencies, notwithstanding statutory and regulatory duties to investigate prosecutorial misconduct, the culture tends to be restrictive – and secretive.

For example, the Office of Professional Responsibility (OPR), the U.S. Department of Justice's internal agency for attorney discipline, routinely refuses to release the names of prosecutors who have committed wrongdoing.

The OPR has repeatedly ignored calls for more transparency, arguing that the Privacy Act of 1974 precludes the release of such information. "OPR is a black hole. Stuff goes in, nothing comes out," said Jim E. Levine, former president of the National Association of Criminal Defense Lawyers. "The public, the defense attorneys and the judiciary have lost respect for the government's ability to police itself." [See: *PLN*, Aug. 2011, p.12].

According to the OPR's 2013 annual

**ORDER THE NEW PRISON OFFICIAL CATALOG - ONLY \$10**

**PRISON OFFICIAL**  
www.prisonofficial.com

**ISSUE #1 OR ISSUE #2**  
5 FREE HOT MODEL PHOTOS INCLUDED WITH PURCHASE

**INMATES #1 RECOMMENDED**

**CORRECTIONAL FACILITY APPROVED**

**GET MAIL DONT DELAY**

**ORDER THE NEW PEN PAL LIST OF 50 REAL ADDRESSES TO FEMALES WAITING TO CORRESPOND TO PRISONERS**

**RECENT PHOTOS INCLUDED!**

**SEND \$49.95**

Inmates post your profile on our Pen Pal website  
**www.PrisonOfficial.com**  
2 year membership - Send \$30  
250 word limit send S.A.S.E for return of your photo

**Send Facility Checks/Money Orders To:**  
**MUST ADD \$2 S/H TO ALL ORDERS**  
**PRISON OFFICIAL**  
**P.O. BOX 1427**  
**WARRENVILLE IL 60555**

**PRISONER ASSISTANT**  
REHABILITATION AND REENTRY PLANNING

**Join Our Exclusive Membership, Open a Bank Account and Gain Access to Our Services!**  
We provide full services to our membership clients. **MEMBERS ONLY**

**A Bank Account under your social security number is the only way to build a positive banking history.**  
Deposits, Statements, Money Orders, Bank Checks, **BANKING & FINANCE**

**Prisoner Concierge**  
Internet Purchases, Gift Cards, Current Events, People Search, Personal Shopper and much more. "If It Can Be Done, We Will Try To Do It"

We can do any Graphic Design project. Printed Material, Musical Emails, Creative Writing, Photo Reproduction & Forwarding, Book Publishing, Book Cover Design, Press Releases, Portfolio Creation, and Website Design. **GRAPHIC**

**Virtual Office**  
Mailboxes, Emails, Texts, Scanning, Copies, Typing, Storage, Document Preparation, Internet Research, Prepaid, Contract & Computer Aided Phones.

Place your profile on [prisonerassistant.com](http://prisonerassistant.com) and access our Special Features; Classifieds, Portfolios, Posts & Blogs, Market Place and Sponsor a Prisoner. **social content media**

PO Box 704-AD1  
Lake Harmony, PA 18624-0704  
[www.prisonerassistant.com](http://www.prisonerassistant.com)  
[info@prisonerassistant.com](mailto:info@prisonerassistant.com)  
(570) 722-5800

For more information - send \$4.50 to "Prisoner Assistant" for an Application Package and 80 page color catalog. If you send an SASE you will only receive a brochure. **NO PERSONAL CHECKS ACCEPTED**

**Business Development** **JOIN NOW!** **Credit Development**

**The services below are available to all prisoners - not just our clients!**

**On Demand Services**  
**PRISONER ASSISTANT NOW OFFERS SELECT SERVICES TO ALL PRISONERS! NO MEMBERSHIP NECESSARY!**  
**SEND AN SASE FOR OUR ON DEMAND BROCHURE**

**Banking and Financial Management Course**  
120 pages, complete course with 8 chapters and exams. Transcript and Certificate available. Send \$30.00 to Prisoner Assistant at the address above with a request for the course. Open to Everyone.

**Personal Reentry Guide and Journal**  
233 pages, complete course with 7 chapters and exams. Transcript and Certificate available. Send \$35.00 to Prisoner Assistant at the address above with a request for the course. Open to Everyone.

**NO PERSONAL CHECKS ACCEPTED**

## Prosecutorial Misconduct (cont.)

report, the agency received 819 complaints that year and opened 126 investigations or inquiries. It also resolved 122 cases in 2013, which included complaints from previous years. Of the 122 investigations and inquiries closed in 2013, the vast majority were dismissed upon a finding of no merit to the allegations. Only 18 cases resulted in a finding of professional misconduct – up from 14 in 2012.

In March 2014, the Project on Government Oversight reported that over a 12-year period, from fiscal year 2002 through 2013, the OPR had documented 650 infractions committed by federal attorneys and other Department of Justice employees. More than 400 of those violations were considered serious, involving reckless disregard to or intentional violation of a law, rule or ethical standard. The OPR does not consider lesser infractions, such as exercising poor judgment and making mistakes, to constitute misconduct.

### Reporting by Defense Attorneys

Relying on defense counsel to report prosecutorial misconduct has not resulted in consistent results, either. The disincentives are many. First, most misconduct proceedings related to criminal cases cannot begin until after the case has been resolved. At that time, a defense attorney's representation of his or her client is usually over, leaving the lawyer without compensation for the time and effort required to pursue a

disciplinary complaint.

Second, many defense attorneys are hesitant to file complaints against prosecutors they must deal with on a day-to-day basis, and who will be opposing them in future cases. This is especially true in rural areas, where making enemies in the only courthouse in town is not an attractive proposition.

Lastly, with more than 90% of all criminal cases being resolved through plea bargains, when misconduct occurs it may be used as a bargaining chip during plea negotiations, precluding a formal complaint. In short, reliance on the defense bar to report prosecutorial misconduct is an inadequate means of oversight.

### Judicial Disciplinary Referrals

Many judges, notwithstanding well-defined duties to report known incidents of misconduct, seem hesitant to report prosecutors for disciplinary proceedings – as indicated by the relative dearth of disciplinary complaints filed by the judiciary. The fact that many judges are former prosecutors themselves may also be a contributing factor.

Moreover, despite Judge Henry Floyd's complaint that "something must be done" about recurring wrongdoing by prosecutors, many judges seem content with allowing others to handle the dirty work of disciplinary complaints, vacating convictions when necessary due to the taint of misconduct but infrequently referring cases for disciplinary action.



In its ruling in the *Lopez-Avila* case, while noting that various disciplinary

options were available, the Ninth Circuit stated: "[I]t is not our task to conduct a thorough investigation of [AUSA] Albert's conduct for disciplinary purposes," and "We recognize that this court is not the proper venue for direct discipline of Albert, so we will not state here that the blow struck by him necessarily was one so foul as to require some form of official sanction."

Further, judges may choose to focus on other issues in post-conviction appeals rather than allegations of prosecutorial misconduct. For example, in September 2014, the Texas Court of Criminal Appeals reversed the murder conviction of Hannah Ruth Overton. Overton had been sentenced to life without parole for the death of her 4-year-old foster child, which was caused by hypernatremia (a salt overdose); on appeal she raised claims of ineffective assistance of counsel and prosecutorial misconduct, the latter related to a *Brady* violation.

In reversing Overton's conviction, the appellate court based its decision on the ineffective assistance of counsel claim and, therefore, wrote "there is no need for us to address the second issue of whether the State failed to disclose exculpatory evidence." In fact, the majority did not mention any details related to the *Brady* claims, though they were described in a concurring opinion.

Judge Cathy Cochran, concurring, wrote that Overton's *Brady* claims included "the alleged withholding of records showing the low sodium content of [the child's] vomit when he was brought to the Urgent Care Center.... [and] the purported failure



**Serving You with Excellence Since 2009**

**We make it simple.**

**You reach your loved ones by calling a local number. That's a lot cheaper than calling long distance. It's that simple!**

- We charge \$2.50 per month for the number.
- For Calls to anywhere in the U.S., we charge you 5¢ per minute
- To Mexico - 15¢; to Canada - 11¢, to just about anywhere else in the world - 31¢
- No Contract, No Credit Check, No Setup Fee, No Cancellation Fee, No Early Termination Fee
- Cancel anytime; any money left on the account is refunded

**Any time you refer a new customer and they sign up, you both get 300 free minutes! Some restrictions apply. Details upon request.**

**Tell Your Folks to Sign Up at [www.freedomline.net](http://www.freedomline.net)**

**Or Mail: FreedomLine  
PO Box 7 - SCA  
Connersville, IN 47331**

**Also see our long-running Classified Ad in this and every issue**

**FCC Reg. No. 0021217047**



to disclose ... medical records and knowledge that [the child] suffered from undiagnosed cognitive deficiencies that caused him to have temper tantrums, throw feces, and eat inappropriate items, such as salt."

Judge Cochran also noted: "At the habeas hearing, the lead prosecutor conceded that, during this 2007 trial, she was an alcoholic who was also taking prescription diet pills that affected her memory. She was later fired by the District Attorney ... for unrelated ethical violations. During the habeas hearing, the prosecutor repeated seventy-two times that she did not recall or did not know the answers to questions concerning the investigation or trial of applicant."

The prosecutor accused of misconduct in the case was not identified in the court's ruling. She was former assistant district attorney Sandra Eastwood. See: *Ex parte Overton*, 2014 Tex.Crim.App. LEXIS 971 (Tex.Crim.App. Sept. 17, 2014).

#### *Prosecutorial Self-Policing*

Relying on prosecutors to police themselves has not been successful. A 2013 white paper by the Center for Prosecutor

Integrity, titled "An Epidemic of Prosecutor Misconduct," noted that prosecutor associations, such as the National District Attorneys Association (NDAA), have failed to adequately address the issue of misconduct. The paper stated that "A search of the NDAA website using the search terms 'prosecutorial misconduct' or 'prosecutorial error' fails to identify a single office, program, or even publication that is devoted to rectifying this problem."

The same can be said of the National Association of Attorneys General (NAAG), which in 2012 adopted a resolution urging courts, when reviewing the conduct of prosecutors, to differentiate between "errors" and "prosecutorial misconduct," calling the latter a "term of art in criminal law."

Former federal prosecutor Mary Judge Darrow, fired from the North Carolina Eastern District office in 2004, later won \$170,000 in a discrimination suit against her former employer. She said she had been criticized by her supervisor for giving too much discovery material to defense attorneys. "For some reason, that was wrong," she stated.

A few district attorneys' offices have

established Conviction Integrity Units (CIUs), also known as Conviction Review Units, to examine potential wrongful convictions, new evidence and allegations of misconduct. The first CIU was created in 2007 in Dallas County, Texas following a number of exonerations. Other units have been established in Houston, Texas; Santa Clara, California; Cook County, Illinois; Baltimore, Maryland; Wayne, Michigan; Cuyahoga County, Ohio; Philadelphia, Pennsylvania; and Brooklyn and Manhattan in New York.

The Manhattan CIU reportedly investigated 140 cases from 2010 to April 2014, re-examined at least a dozen of those cases and agreed to vacate three convictions.

Some Conviction Integrity Units only review wrongful convictions after the fact, rather than trying to prevent them in the first place; others do not review cases where the defendant pleaded guilty, even though prosecutorial misconduct may have induced a guilty plea; and some lack public transparency. Plus, of course, such units are typically staffed and overseen by prosecutors, who review convictions obtained by their colleagues.

**William L Schmidt**  
ATTORNEY at LAW, P.C.

[911CIVILRIGHTS@GMAIL.COM](mailto:911CIVILRIGHTS@GMAIL.COM)

**559.261.2222 (clients only collect)**

#### **Legal Services for California Inmates:**

**APPEALS**

**WRITS OF HABEAS CORPUS**

**Civil Litigation**

**Catastrophic Injury Litigation**

**Money Management**

**Business Windup**

**Contracts**

CIVIL RIGHTS-SECTION 1983-FEDERAL AND STATE  
APPEALS AND WRITS- ONLY COMPLEX AND UNIQUE CASES  
PRISON-TRANSFER-DISCIPLINE-VISITING-CLASSIFICATION-HOUSING  
PROP. 36 RE-SENTENCING-3 STRIKES-MEDICAL-PAROLE HEARINGS

-----OUR CLIENTS GO HOME, HOW ABOUT YOU? -----  
*Please submit a single page summary of your case. Due to the volume, we cannot return documents or respond to all inquires. We are not a low cost or pro bono law firm, but if you want results, write us.*

**P.O. BOX  
25001  
FRESNO, CA  
93729**

### Legislative Reforms

THERE HAVE BEEN VARIOUS LEGISLATIVE efforts to address prosecutorial misconduct. In May 2013, on the 50<sup>th</sup> anniversary of the *Brady* decision, Texas lawmakers passed Senate Bill 1611, also known as the “Michael Morton Act.”

The bill not only expands the discovery obligations of prosecutors in criminal cases, it takes the additional step of adopting the ethical rule standard of requiring Texas prosecutors to timely disclose all information that “tends to negate guilt or mitigate punishment.” The bill had the support of both the Texas District and County Attorneys Association and the Texas Criminal Defense Lawyers Association, and was signed into law by Governor Rick Perry on May 16, 2013.

It is hoped that codifying these requirements, instead of allowing prosecutors to simply “interpret” their *Brady* obligations and other legal precedents, will ensure the disclosure of exculpatory and mitigating evidence to defendants. The law provides a framework for defense attorneys to move for contempt citations, bar discipline and other sanctions.

Texas also passed another bill as a result of Morton’s wrongful conviction, the Prosecutor Accountability Act (Senate Bill 825), enacted in June 2013, which provides for at least some discipline when a prosecutor violates his or her ethical

requirements. While relatively mild in its scope – in some cases, public censure is the only sanction – the bill is seen as a step in the right direction, which is more than most other states have done.

At the federal level, there have been attempts to make the *Brady* disclosure rule a statutory requirement and otherwise address prosecutorial misconduct. In March 2012, U.S. Senator Lisa Murkowski and a bipartisan group of co-sponsors introduced S.2197, the Fairness in Disclosure of Evidence Act.

The bill sought to clarify implementation of the *Brady* rule, and was the culmination of a lengthy fight by the National Association of Criminal Defense Lawyers (NACDL) to codify *Brady*’s requirements and correct two important misunderstandings of the *Brady* rule. First, that “favorable” evidence and not merely “exculpatory” evidence is required to be disclosed under *Brady*. At least in the federal courts, prosecutors would have to turn over anything “favorable” to the defense whether or not it is “exculpatory.” Such statutory language would, according to NACDL, require agencies like the Department of Justice to change its focus to evidence that, in the words of the proposed bill, “may reasonably appear to be favorable to the defendant.”

Second, the Act would help to abandon the “materiality” requirement for *Brady* evidence applied by many prosecutors. As indicated in *Connick* and other decisions, some prosecutors take it upon themselves to weigh the relative evidentiary value

(materiality) of disclosable information when deciding whether or not to provide it to the defense.

Third, the Fairness in Disclosure of Evidence Act would cover all “information” favorable to the accused without regard to the prospective admissibility of that information. *Brady* itself involved only a sentencing proceeding where the rules of evidence generally do not apply.

Fourth, the Act would require disclosure of favorable material “without delay after arraignment and before the entry of any guilty plea.” Later-discovered material must be disclosed as soon as “is reasonably practicable.” No triggering demand by defense counsel is required. The Act would supersede any timing provisions for other disclosures, such as the Jencks Act, 18 U.S.C. § 3500, which allows prosecutors to withhold *Brady* material contained in the statements of a witness until the witness has completed his or her direct examination.

Further, the Act would allow for the recovery of costs and other appropriate remedies from the prosecution upon a finding of non-compliance with discovery obligations, irrespective of the outcome of the case.

While the Fairness in Disclosure of Evidence Act died in committee at the end of the 112th Congress, it may be reintroduced in future sessions.

In March 2014 Senator Murkowski introduced the Inspector General Empowerment Act (S.2127), which would move investigations involving misconduct by DOJ attorneys and law enforcement personnel from the Office of Professional



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription! Quarterly drawing WINS \$100! (Void in New York) (Last Quarter's winner from Somers, CT.) TELL YOUR FRIENDS! ACT NOW!!

PO Box 2063 • Fort Walton Beach FL. 32549  
[www.InmateMagazineService.com](http://www.InmateMagazineService.com)

## Inmate Magazine Service





Responsibility to the Office of the Inspector General. Attorney General Holder has expressed opposition to the bill, preferring to keep prosecutorial misconduct investigations at the OPR.

## Remedial Recommendations

THERE ARE NO EASY FIXES THAT WILL change the tacit, and sometimes not-so-tacit, tolerance of prosecutorial misconduct in our nation's criminal justice system. However, recent efforts to identify and prevent such violations have at least paved the way for additional reforms.

## Statutory Solutions

Legislative efforts like those in Texas, and proposed in Congress, are perhaps the most significant steps that can be taken to address issues related to *Brady* violations and other prosecutorial misconduct. As a 50-year series of Supreme Court decisions has done little to change the culture of resistance to constitutional evidence disclosure standards, compliance needs to be mandated by statute.

Undoubtedly, such efforts will be met with opposition by district attorney associa-

tions and law enforcement groups, but the reality is that decades of allowing prosecutors to make evidence disclosure decisions based on their own standards and internal policies, and to self-police those disclosures, has been a failure.

Adopting uniform disclosure obligations via statutory provisions will ensure that all parties involved in criminal proceedings have concrete expectations with respect to disclosure of evidence, which will allow for a more streamlined review process when violations occur.

Likewise, mandatory reporting of prosecutorial misconduct should be required by statute and not solely addressed through professional standards, which lack the force of law and statutorily-imposed penalties.

In May 2014, New York lawmakers introduced a bill that would create an independent state watchdog commission on prosecutorial conduct, to review allegations of misconduct and impose discipline when ethical violations are found.

"I think it would be helpful to both prosecutors and the public to have more confidence in the system," said Senator John DeFrancisco, the bill's sponsor. The

legislation, S6286A-2013, remains pending in committee. Other states would do well to consider a similar approach.

## Open File Discovery Rules

Perhaps the fastest way to address the problem of prosecutorial non-compliance with evidence disclosure obligations is the widespread adoption of an "open file" discovery process. In some jurisdictions, district attorneys' offices simply open their files so defense counsel can examine *all* of the evidence and information in a case. While the potential for abuse still exists in open file discovery – there are numerous cases in which unscrupulous prosecutors have withheld evidence – most observers agree that open file discovery is more effective than leaving it to individual prosecutors to make subjective *Brady* assessments.

## Education on Ethical Obligations

In its *Connick* decision, the Supreme Court's rationale for requiring a pattern of misconduct to prove a failure-to-train claim as a means of imposing municipal liability included a reference to the law school education, bar examinations and professional



## Save on Prescription Eyeglasses & Shades

Send for a **FREE** Catalog  
Money Back Guarantee

**Prism Optical, Inc.**  
10954 NW 7th Ave  
Dept: LN1114  
Miami, FL 33168

Inquiries from Friends  
and Family Welcome  
1-800-637-4104  
www.prismoptical.com  
contact@prismoptical.com



# BRANLETTES BEAUTIES

## OUR SIMPLE POLICIES:

SPECIAL REQUESTS ARE NOT PERMITTED AND ALL MODELS ARE OF LEGAL AGE (BOP-FRIENDLY). DUE TO TREMENDOUS TIME AND COST ANSWERING LETTERS, UNLESS YOU ARE PLACING AN ORDER OR A QUESTION REGARDING YOUR ORDER, WE WILL NOT REPLY TO ANY OTHER QUESTIONS.

SASE ARE REQUIRED FOR ANY INQUIRIES OR CONCERNS!

**YOU AND YOU ALONE ARE RESPONSIBLE FOR YOUR SELECTIONS BEING ALLOWED INTO YOUR FACILITY:**

KNOW YOUR INSTITUTIONS POLICIES AS TO WHAT IMAGE CONTENT IS ALLOWED. RETURNED ORDERS ARE NON-REFUNDABLE. THEY WILL BE HELD FOR 14 CALENDAR DAYS IN ORDER FOR YOU TO SEND SELF-ADDRESSED STAMPED: 3 FIRST CLASS STAMPS PER ENVELOPE, WITH A STREET ADDRESS FOR EVERY 20 PICTURES. ALL RETURNED IMAGES HELD AFTER TWO WEEKS WILL BE RE-SOLD AND WE WILL RETURN TO OUR STOCK.

**ALL PAYMENTS ARE BY INSTITUTIONAL CHECKS OR U.S. POSTAL SERVICE OR WESTERN UNION MONEY ORDERS.**

THESE PAYMENTS ARE PROCESSED IMMEDIATELY AND SHIPPED IN LESS THAN 3-4 WEEKS. ANY OTHER COMPANY MONEY ORDERS DELAY SHIPMENT 8-10 WEEKS OR UNTIL THAT MONEY CLEARS OUR BANK. YES, WE DEAL WITH PEOPLE THAT ARE, WHILE IN PRISON, STILL TRYING NICKEL AND DIME SCAMS...

**ALL SALES ARE FINAL! EACH CATALOG HAS 84 GORGEOUS LADIES TO CHOOSE FROM HIGH QUALITY PRINTS ON 4X6 GLOSSY PHOTO PAPER**

OUR PRICES ARE SIMPLE:

SHIPPING & HANDLING:

1-4999 PHOTOS = 0.45 CENTS EACH  
5000+ PHOTOS = 20% DISCOUNT  
1-9 CATALOGS: \$3.00 EACH (+SASE)  
10 CATALOGS: \$25.00+SASE (4 STAMPS)

DUE TO VARIOUS PRISON POLICIES REGARDING HOW MANY PICTURES CAN BE SENT IN ONE ENVELOPE, OUR POLICY IS AS FOLLOWS:  
01 - 5 PHOTOS---\$1.00 PER ENVELOPE  
06 - 15 PHOTOS---\$1.50 PER ENVELOPE  
16 -25 PHOTOS---\$2.00 PER ENVELOPE

## BRANLETTES BEAUTIES

SELECT YOUR FAVORITE:

WHITE CATALOGS (60 VOLUMES)  
BLACK CATALOGS (60 VOLUMES)  
ASIAN&LATINO CATALOGS (60 VOLUMES)  
PLEASE STATE WHAT STYLE PHOTOS'S:  
PROVOCATIVE POSES OR NUDE

## FREE CATALOG???

YOU READ IT RIGHT!  
JUST SEND US TWO U.S. FOREVER STAMPS AND A SELF ADDRESSED SELF ENVELOPE AND WE WILL SEND TO YOU ONE NUDE OR BOP-FRIENDLY SAMPLE CATALOG (1 PER CUSTOMER) WITH 84 GORGEOUS GIRLS IN FULL COLOR. ACT NOW AS THIS OFFER WILL NOT BE AROUND LONG!!

BRANLETTES BEAUTIES BAC A RANDOM SELECTION OF 50 OF THE RARE AND EXOTIC \*\*\*YES, FIFTY BEAUTIES ALL POSING JUST FOR YOU!\*\*\* PLUS TWO OF OUR FINEST COLOUR CATALOGS ONLY \$19.95 DID YOU READ THAT RIGHT??? \*\*\*\$19.95???\*\*\* YES, ONLY \$19.95 FOR 50 OF BRANLETTES BEAUTIES BEAUTIES (PLEASE SPECIFY NUDE OR BOP-FRIENDLY) \*\*\*PLUS\*\*\* TWO OF OUR FINEST COLOUR CATALOGS FREE (YOU PICK A VOLUME) OUR REGULAR SHIPPING AND HANDLING POLICIES APPLY.

**BRANLETTES**  
P.O. BOX 5765  
BALTIMORE, MD  
21282

## Prosecutorial Misconduct (cont.)

training that all attorneys are presumed to have received. Sadly, the Court's reliance on such education and training appears misplaced.

Indeed, some law schools do not even require criminal procedure as mandatory coursework. The Tulane University Law School in New Orleans, where the *Connick* case originated, requires students to take Criminal Law. However, the Constitutional Criminal Procedure course at the school is an elective.

In no area of the law does an individual attorney have more effect on other peoples' lives than in the role of prosecutor, and it is therefore essential to ensure that prosecutors receive sufficient training on their professional and ethical obligations. For those who claim that prosecutors already receive education and training in those areas, it is apparent from the examples of misconduct cited in this article that the current syllabus is inadequate.

Methods to implement such a requirement include via bar certifications to

practice as a prosecutor, or through statutory provisions or local court rules.

### Greater Transparency

The practice of keeping attorney disciplinary proceedings secret is perhaps the greatest barrier to improving the accuracy and fairness of – and public confidence in – our nation's criminal justice system. In no other area of public service is there such a lack of transparency. This institutional secrecy extends to the judiciary, as many court rulings that address prosecutorial misconduct purposefully do not mention the name of the prosecutor involved.

*United States v. Olsen*, for example, in which Chief Judge Alex Kozinski voiced a strongly-worded dissent, involved allegations that a federal prosecutor had failed to disclose that a forensic analyst who handled evidence in the case was under investigation for misconduct which had already resulted in three wrongful convictions. Yet the Ninth Circuit's ruling never identified the prosecutor – Assistant U.S. Attorney Earl Hicks.

It is perhaps ironic that those who run for public office are often required to disclose detailed information about

their personal life, finances and potential conflicts of interest, yet when it comes to prosecutors who engage in misconduct, such violations of the public trust are deemed too "sensi-

tive" to reveal to the public. Requirements to disclose prosecutorial wrongdoing can only improve the public's trust and faith in the justice system.

After all, the transgressions of criminal defendants are public record; why should violations by those who prosecute them be any less transparent? Disciplinary proceedings need to be open to the public, which in itself would provide a deterrent effect to prosecutorial misconduct. Many state bar disciplinary boards also impose private sanctions that are not publicly reported, such as private reprimands or admonishments, which are insignificant punishments.

Additionally, in order to promote transparency, agencies that handle complaints involving prosecutors should be independent and not under the authority of the district attorney's office or U.S. Attorney's office on the state and federal levels, respectively.

As stated in the 2011 *Yale Law Journal Online* article on prosecutorial misconduct: "The lack of any external oversight of prosecutors' offices creates an environment in which misconduct can go undetected and undeterred."

### Motions for Ethical Disclosures

As mentioned above, there appears to be little downside in promoting a campaign for defense attorneys to file pretrial motions asking courts to require prosecutors to confirm their compliance with ethical and regulatory obligations.

One critic of the current system that fails to adequately address prosecutorial

## NEW FRIENDS, HIGHER EDUCATION, AND EMPLOYMENT & HOUSING UPON RELEASE THROUGH WRITEAPRISONER.COM PROFILES

**Contact WriteAPrisoner.com & Start Looking Forward To Mail Call!**

AS SEEN ON  
CNN, 20/20, Fox News,  
Dr. Phil, O Magazine,  
E! True Hollywood,  
and hundreds more!

**WriteAPrisoner.com...**  
Simply the largest, highest ranked, & most visited website of its kind!

- Pen-pal Profiles are affordably priced at \$40 for the first year, \$30 for renewing year
- Features a comprehensive search that allows viewers to find your profile by age, race, location, keywords, & more - 32 search options in all
- Your new friends can email their first message to you along with a photo
- Advertises non-stop on every major search engine with thousands of websites linking back to us
- Offers free Reintegration Profiles for inmates seeking employment and housing upon release and education during incarceration
- Translated into 51 languages & geared for international search engines
- Viewers can "subscribe" to your profile to be notified when your profile is updated, blog is added, artwork is posted, poetry is added, your release is near & much more
- Pen-pals have the option of helping you with a broad range of topics using WriteAPrisoner.com's free Self-Help Series

  
**WriteAPrisoner.com**  
We'll see you at mail call!

**Get Started Today!**

Friends & family can submit your entire 250 word profile, photo, and payment for you online by visiting

[www.writeaprisoner.com/post](http://www.writeaprisoner.com/post)

Or for a FREE Brochure, Send a S.A.S.E. to:

WriteAPrisoner.com  
PO Box 10- PLN  
Edgewater, FL 32132 USA

Proud member of the Better Business Bureau of Central Florida & the Southeast Volusia Chamber of Commerce.  
\*Our website traffic can be independently verified at [www.quantcast.com/writeaprisoner.com](http://www.quantcast.com/writeaprisoner.com)



**Know What's Good On TV With Channel Guide magazine**

- Daily schedules for **over 120 channels**
- Weekly **TV best bets**
- **Over 3,000 movie listings**
- **TV Crossword, Sudoku, celebrity interviews** and more
- **1 Year (12 issues) for just \$35**

**Mail your \$35 check or money order payable to Channel Guide Magazine to:**

Channel Guide Magazine AAKPLNG  
PO Box 8501, Big Sandy, TX 75755-8501

**Include your name, ID number and address.**

**Or call 866-323-9385 or 903-636-1107**

misconduct has suggested the use of “*Brady* colloquys” by the judiciary. Jason Kreag, a visiting assistant professor at the University of Arizona’s James E. Rogers College of Law, proposes that judges engage in a standard practice of questioning prosecutors about their compliance with evidence disclosure requirements, on the record in open court, during pre-trial hearings and before plea hearings. As Kreag notes, “judges could implement a *Brady* colloquy today without the need for additional legislation or ethical rules.”

Judge Kozinski stated in his dissenting opinion in *United States v. Olsen* that “[s]ome prosecutors don’t care about *Brady* because courts don’t make them care.” A judicially-imposed *Brady* colloquy in open court would help make prosecutors care, as it would require them to affirm that they have complied with their ethical obligations, thereby creating a record that can be used to easily impose discipline if misconduct is later revealed.

#### Case Reviews after Misconduct Findings

After a prosecutor is found to have engaged in misconduct by a disciplinary board

or other investigative agency, due diligence demands a review of other cases in which the prosecutor was involved.

While rare, that is what occurred in the Michael Morton case, when Williamson County district attorney Jana Duty agreed in November 2013 to allow an independent review of every case handled by former prosecutor Ken Anderson, whose wrongdoing sent Morton to prison for over two decades. The review will be conducted in conjunction with the Innocence Project, and include other cases in which the Williamson County DA’s office successfully objected to DNA tests requested by defendants claiming they were wrongfully convicted.

#### Curtailling Absolute Immunity

In most cases, prosecutors have absolute immunity for actions taken within the scope of their prosecutorial duties; they cannot be held civilly liable. In theory, this is to protect prosecutors from vexatious and frivolous litigation that would distract them from their responsibilities and make them less inclined to vigorously prosecute criminal cases.

The judicially-created doctrine of prosecutorial absolute immunity was established in *Imbler v. Pachtman*, 434 U.S. 490 (1977), a death penalty case in which a prosecutor was accused of suppressing evidence and knowingly using false testimony.

The Supreme Court has called absolute immunity “a balance of evils,” and stated it is “better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation.” See: *Van de Kamp v. Goldstein*, 555 U.S. 335 (2009).

Prosecutors wield an enormous amount of power. They decide who to charge and what charges to bring, including whether to seek sentence enhancements, as well as what plea bargains are offered and any conditions that attach to plea deals. But with power comes responsibility, and prosecutors should not enjoy absolutely immunity unless they are absolutely unable to engage in wrongdoing.

Indeed, the doctrine of absolute immunity may actually contribute to misconduct, as prosecutors do not fear the prospect of civil liability and damage awards should their violations be discovered. Abolishing

- \* *Post-Conviction Specialists (Habeas Corpus/2254/2255/AEDPA/Procedural Bars/Coram Nobis/PRP/Certiorari/Sentence Modifications/DNA and more).*
- \* *All 50 States, D.C., Federal District/Appellate and Supreme Court.*
- \* *Special programs available for Veterans.*
- \* *Payment plans available.*
- \* *Now accepting Credit Cards.*
- \* *FREE initial consultation (send SASE)*
- \* *CALIFORNIA INMATES: We do 2-3 striker VARGAS petitions*
- \* *FEDERAL INMATES: We do “Drugs Minus Two” Petitions which are RETROACTIVE!*
- \* *SPECIAL RATES FOR PLN SUBSCRIBERS!*

#### Legal Insights Inc.

25602 Alicia Parkway Suite 323

Laguna Hills, CA 92653

714-941-0578

info@legalinsights.org

www.legalinsights.org

A California 501(c)(3) Non-Profit Organization

## Learn The Law!

It's a POWERFUL influence in your life.

Choose education to help yourself and others. Blackstone's Independent Study Paralegal Program offers you the opportunity to be productive while serving time.

- Learn Civil & Criminal Law
- Learn Legal Research
- 110 Years of Legal Training Experience
- Study in Your Spare Time
- Affordable Tuition, Easy Payment Plan

Only  
**\$30.00**  
Per Month

☐ **Yes! I'd like to learn more** ☐ **Paralegal Course**  
Please rush me **FREE** course information.

Name \_\_\_\_\_ Doc# \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**Blackstone**  
**Career Institute**

Your tuition cost covers your entire program including all textbooks, study guides, exam and homework evaluation services, and your certificate.

**P.O. Box 3717 • Allentown, PA 18106**



## Prosecutorial Misconduct (cont.)

or limiting absolute immunity would force prosecutors to consider the consequences of their actions relative to their personal accountability.

It is obvious from both the examples cited in this article and numerous court decisions that prosecutors are not immune to ethical violations, deliberate wrongdoing and even criminal behavior. Thus, they should not be afforded the benefit of absolute immunity.

It is worth noting that absolute immunity does not extend to prosecutors when they engage in conduct unrelated to their official prosecutorial duties – such as investigative or discretionary activities. For example, one such case involved comments made by a prosecutor during a press conference. See: *Buckley v. Fitzsimmons*, 113 S.Ct. 2606 (1993).

The distinction as to what conduct is entitled to immunity can be complicated due to various loopholes, however, as discussed in a recent Seventh Circuit decision that found a prosecutor was not entitled to absolute immunity for fabricating evidence before a defendant's indictment and then prosecuting the defendant, who was eventually exonerated after serving 17 years in prison.

In a fairly technical ruling, the Court of Appeals explained that "A prosecutor cannot retroactively immunize himself from conduct by perfecting his [investigatory] wrongdoing through introducing the fabricated evidence at trial and arguing that the tort was not completed until a time at which he had acquired absolute immunity." See: *Fields v. Wharrie*, 740 F.3d 1107 (7th Cir. 2014).

In a 2014 report, the Center for Prosecutor Integrity suggested replacing prosecutorial absolute immunity with qualified immunity – a lesser form of immunity defense commonly applied to other government actors.

Another alternative to curtailing the absolute immunity granted to prosecutors in *civil* cases is to file *criminal* charges against prosecutors who engage in egregious misconduct – particularly misconduct that results in wrongful convictions. That was the suggestion of Dallas County district attorney Craig Watkins, who has proposed the increased use of criminal charges to sanction abusive prosecutors; for example, criminal contempt of court.

But then who would prosecute those prosecutors? Presumably, other prosecutors.

## Conclusion

THE Pervasiveness of prosecutorial misconduct is a problem that requires immediate attention by lawmakers, the judiciary, and the professional watchdog organizations and tribunals charged with overseeing attorney discipline, as well as by prosecutors themselves.

Legislative efforts such as the Fairness in Disclosure of Evidence Act are a positive development, though they tend to focus on *Brady*-related issues and do not reach other forms of wrongdoing. Ultimately, the reporting and redress of prosecutorial misconduct must come from those within the criminal justice system, including judges and defense attorneys, such as through the enforcement of a stronger version of ABA Model Rule 3.8 and similar regulations.

Meaningful disciplinary proceedings, also a useful tool, have been under-utilized, and a change in the "conviction at any cost" culture among prosecutors must be realized through better professional training and education. Only then will we be able to truly address this pervasive problem that serves to undermine public confidence in our criminal justice system – where the emphasis should be on "justice," not conviction rates.

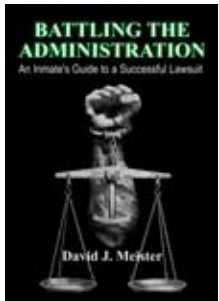
Yet from the viewpoint of those victimized by abusive prosecutors, including those who have been wrongly convicted and imprisoned, disciplinary sanctions such as reprimands, censures and suspensions provide little comfort. Michael Morton spent nearly 25 years in prison; John Thompson

was almost executed. And there are many other examples of prosecutorial misconduct that has put innocent people behind bars or on death row.

Ultimately, a change in the adversarial nature of our criminal justice system is needed. Such change is possible, but only if an honest effort is made by everyone involved, beginning with how prosecutors view their own role, responsibilities and ethical obligations.

As stated by Thompson: "It's about a system that is void of integrity. Mistakes can happen. But if you don't do anything to stop them from happening again, you can't keep calling them mistakes." ■

Sources: *ABA Journal*; *American Bar Association Model Rule of Professional Conduct 3.8* (2008); *American-Statesman*; *Arizona Star*; *Associated Press*; *Daily Business Review*; *Houston Chronicle*; <http://allthingscrimeblog.com>; <http://jacksonville.com>; <http://news.yahoo.com>; *National Law Journal*; *New York Daily News*; *The New York Times*; "Preventable Error: A Report on Prosecutorial Misconduct in California, 1997-2009," by the Veritas Institute (October 2011); "Prosecutor Misconduct," 2d. ed., by Bennett Gershman; "Prosecutor Misconduct: Law, Procedure, Forms," by Joseph F. Lawless (2011); *The Champion*; "The Myth of Prosecutorial Accountability After *Connick v. Thompson*: Why Existing Professional Responsibility Measures Cannot Protect Against Prosecutorial Misconduct," by David Keenan, et al., 121 *Yale Law Journal Online* 203 (October 2011); *Texas Tribune*; *National Registry of Exonerations*; *USA Today*; *Washington Examiner*; [www.alternet.org](http://www.alternet.org); [www.fbi.gov](http://www.fbi.gov); [www.huffingtonpost.com](http://www.huffingtonpost.com); [www.law.com](http://www.law.com); [www.nationalreview.com](http://www.nationalreview.com); [www.newsobserver.com](http://www.newsobserver.com); [www.prisonlawblog.com](http://www.prisonlawblog.com); [www.propublica.org](http://www.propublica.org); [www.prosecutorialaccountability.com](http://www.prosecutorialaccountability.com); [www.reuters.com](http://www.reuters.com); [www.sptimes.com](http://www.sptimes.com); [www.star-telegram.com](http://www.star-telegram.com); [www.stophedrugwar.org](http://www.stophedrugwar.org); [www.times-standard.com](http://www.times-standard.com); [www.prosecutorintegrity.org](http://www.prosecutorintegrity.org); [www.innocenceproject.org](http://www.innocenceproject.org); [www.watchdog.org](http://www.watchdog.org); <http://gritsforbreakfast.blogspot.com>; [www.law.umich.edu](http://www.law.umich.edu); "The Brady Colloquy," by Jason Kreag, 67 *Stan. L. Rev. Online* 47 (Sept. 2014); [www.abcnews.go.com](http://www.abcnews.go.com); [www.economist.com](http://www.economist.com); [www.federalcriminalappealsblog.com](http://www.federalcriminalappealsblog.com); [www.nola.com](http://www.nola.com); *Los Angeles Times*; [www.syracuse.com](http://www.syracuse.com); [www.justice.gov/opr](http://www.justice.gov/opr); [www.pogo.org](http://www.pogo.org); *Tulsa World*; [www.bronxbureau.org](http://www.bronxbureau.org); [www.ksl.com](http://www.ksl.com); *Commercial Appeal*

<b>BATTLING THE ADMINISTRATION</b> An Inmate's Guide to a Successful Lawsuit	
by David J. Meister ISBN: 9781940638034	
	Send Check or money order to: <b>Wynword Press</b> P.O. Box 557 Bonners Ferry, ID 83805  *Guidance on how to get organized *Sample complaint & other forms *Covers court rules, evidence and exhibits *Citations to controlling case law *Summary of prisoner's rights *Details on hearing and trial practice, ...and more!  Tel: 208-267-0817
1 <sup>st</sup> Edition 2013-2014 <b>\$34.95</b> includes shipping	Order online at: <a href="http://www.wynwordpress.com">www.wynwordpress.com</a>





## State of Washington Prison Phone Justice Campaign

### Fighting the High Cost of Prison and Jail Phone Calls!

The Human Rights Defense Center (HRDC) has been reporting on the high cost of telephone calls from prisons, jails and other detention facilities in the U.S. for over two decades in its monthly publication *Prison Legal News*. An award of funds from the settlement in *Judd v. AT&T*, a prison phone-related lawsuit, has allowed us to launch the Washington Prison Phone Justice Campaign (WA PPJ). The goal of the campaign is to eliminate the kickbacks paid by telephone companies to detention facilities and to regulate the exorbitant rates charged to prisoners, their families and others who accept prison phone calls, including attorneys. Video visitation, which is following closely on the same path as the prison phone industry, has also been incorporated into the campaign.

HRDC co-founded the national Prison Phone Justice Campaign in 2011, which resulted in a historic vote by the FCC in August 2013 that capped the rates for **interstate** (long distance) prison phone calls at \$.25/minute for collect calls and \$.21/minute for debit and prepaid calls. Those rate caps became effective on February 11, 2014. While this has helped millions of families stay connected across state lines, it did nothing for prisoners incarcerated in Washington State who make local and **intrastate** (in-state) calls, estimated by the FCC to constitute 85% of all prison and jail calls.

Studies show that a prisoner's ability to communicate with family and friends while incarcerated results in a smoother transition upon release and reduces recidivism. However, excessive phone rates hamper and sometimes eliminate the ability of prisoners to stay in touch with their loved ones.

We need everyone affected by this issue, including prisoners' family members and attorneys, to sign on to the WA PPJ Campaign and tell us how they have been impacted by high prison and jail phone rates. This can be done by accessing the Campaign's website: **www.wappj.org**. Testimonials and video can be uploaded to the site, or people can call 1-877-410-4863 to record their comments. Or comments can be written and mailed to: HRDC, Attn: WA PPJ Campaign, P.O. Box 1151, Lake Worth, FL 33460. We also need billing records from prepaid accounts (2012 to current) for phone calls received from detention facilities, to demonstrate the actual rates charged to recipients of the calls. Billing records can be emailed to: [cwilkinson@humanrightsdefensecenter.org](mailto:cwilkinson@humanrightsdefensecenter.org).

Lastly, any donations to fund the campaign are both needed and appreciated; donations can be made at **www.prisonphonejustice.org**. Only with your support will we be able to end the abusively high costs of prison and jail phone calls in Washington State. Thank you for your support, and please tell others about the Washington Prison Phone Justice Campaign and encourage them to join!

## Prosecutors Breaking Bad

**T**HE FOLLOWING ARE VARIOUS CASES IN which prosecutors have reportedly engaged in misconduct, ethical violations or criminal behavior, which evidence the need for effective solutions to the persistent problem of prosecutorial abuses.

### California

In 2012, the California Supreme Court overturned the death sentence of Miguel Bacigalupo based on a finding of prosecutorial misconduct. While leaving his murder convictions intact, the Court found that former prosecutor Joyce Allegro – who later became a judge – and her lead investigator had withheld evidence from Bacigalupo's attorneys that indicated a Columbian drug cartel had been involved in the murders.

That information would have bolstered Bacigalupo's defense that he had been forced to commit the murders because cartel members threatened to kill him and his family if he refused – a duress argument that may have spared him the death penalty. See: *In re Bacigalupo*, 55 Cal. 4th 312, 283 P.3d 613 (Cal. 2012).

As previously reported in *PLN*, embattled Del Norte County, California district attorney Jon Michael Alexander faced disbarment after he was found guilty of several counts of misconduct, including charges that he spoke to a defendant without her attorney present and then lied about it. [See: *PLN*, May 2013, p.48; Jan. 2013, p.46]. That incident was merely the latest of multiple complaints filed against Alexan-

der. He was suspended by the County Board of Supervisors in April 2013; regardless, he said he would fight to keep his job.

"I am the elected DA of this county; I still believe that I am," he stated. "My job is to represent the people of this county as a prosecutor. I am not ready to relinquish that right."

On April 30, 2014, the State Bar Court recommended disbarment, noting the hearing judge found that Alexander had "committed acts of moral turpitude" by attempting to conceal his misconduct. "Alexander has been involved with the disciplinary system since 1994, yet he continues to commit misconduct, even while on probation and while serving as the chief law enforcement officer for Del Norte County," the Court wrote. Accordingly, he was "involuntarily enrolled as an inactive member of the State Bar" pending a final decision by the California Supreme Court.

On February 29, 2012, former Contra Costa County prosecutor Paul Sequeira filed a lawsuit in state court against Senior Deputy District Attorney Harold W. Jewett, accusing Jewett of assault and battery. The two men had argued about an election campaign in March 2010, leading Jewett to allegedly "sucker punch" Sequeira in the face. Jewett, who previously had been named "Prosecutor of the Year" by the California District Attorneys Association, was suspended for 30 days without pay – although he was later promoted. [See: *PLN*, May 2013, p.41; May 2010, p.50].

In May 2012, Sequiera received a \$50,000 settlement from Contra Costa County after filing a claim for damages related to the incident.

### District of Columbia

Former Assistant U.S. Attorney G. Paul Howes was accused of mishandling \$42,000 in witness vouchers in the 1990s, giving the payments to relatives and girlfriends of informants, then trying to evade detection and punishment.

As a result of his misconduct the Department of Justice agreed to significantly reduce the sentences of at least nine defendants, including seven convicted of murder. The D.C. Bar's Board of Professional Responsibility merely recommended that Howes be suspended; however, in a rare rejection of such light discipline, in March 2012 the D.C. Court of Appeals held disbarment was "the only appropriate sanction" considering the scope of Howes' misconduct. He was the first federal prosecutor to be disbarred in over a decade. [See: *PLN*, March 2013, p.38].

### Maine

Former state prosecutor James M. Cameron, 51, was convicted in 2010 on charges of sending, receiving and possessing child pornography, and sentenced to 16 years in federal prison. He was released pending an appeal after serving five months; however, he fled when seven of his 13 convictions were upheld by the First Circuit in 2012.

#### LAW OFFICES OF

#### ELMER ROBERT KEACH, III



A PROFESSIONAL CORPORATION

Law Offices of Elmer Robert Keach, III, PC  
One Pine West Plaza, Suite 109  
Albany, NY 12205-5531  
518.434.1718  
www.keachlawfirm.com

Attorney Bob Keach  
NITA Master Advocate  
Member, Multi-Million Dollar Advocates Forum  
Outside Counsel, Prison Legal News

#### Experienced Civil Rights Attorney dedicated to seeking justice for those who are incarcerated

*Custodial Death Cases • Wrongful Arrest and Incarceration*  
*Medical Indifference Cases • Corrections and Police Brutality*  
*Sexual Abuse and Assault • Illegal Strip Searches*  
*Class Actions • First Amendment Litigation*

#### WHEN YOU OR A LOVED ONE HAVE BEEN WRONGED, YOU HAVE A VOICE.

Attorney Keach prefers all inquiries by mail to be typed, and limited to five pages.  
DO NOT SEND UNSOLICITED RECORDS. THEY CANNOT BE RETURNED.  
Make sure to exhaust your administrative remedies and comply with state law notice requirements, if applicable, to preserve state law intentional tort/negligence claims.

Captured in New Mexico 18 days later, he was returned to Maine. On October 17, 2014, the U.S. District Court held that Cameron now faces 24 to 30 years in prison due to his flight while on bail.

### Massachusetts

When Internet activist Aaron Swartz, 26, was caught illegally downloading academic articles from MIT, federal prosecutors filed 13 charges that could have put him in prison for up to 35 years. They then offered Swartz a plea deal in which he would serve six months. Instead, Swartz committed suicide in 2013 and the prosecutors, including Assistant U.S. Attorney Stephen Heymann, were accused of inappropriately overcharging and using a lengthy prison term as leverage to force Swartz to plead guilty. [See: *PLN*, June 2013, p.56].

U.S. Senator John Cornyn questioned Attorney General Eric Holder about the case, asking, "Does it strike you as odd that the government would indict someone for crimes that would carry penalties of up to 35 years in prison and million dollar fines, and then offer him a three or four month prison sentence?"

Holder replied that he thought it was a "good use of prosecutorial discretion."

A complaint was filed against Heymann with the Office of Professional Responsibility; the outcome of the complaint is unknown, as the OPR does not disclose information about specific disciplinary cases.

### Michigan

On August 16, 2012, a federal jury in Detroit found former Assistant Attorney General Andrew Shirvell guilty of stalking, defamation, intentional infliction of emotional distress and invasion of privacy in a civil suit filed by Chris Armstrong, the University of Michigan's first openly gay student body president. The jury awarded Armstrong \$4.5 million in damages.

Shirvell had been fired from the Attorney General's office in 2010 after he "repeatedly violated office policies, engaged in borderline stalking behavior and inappropriately used state resources" to target Armstrong, because he objected to Armstrong's sexual orientation. He had also lied to investigators about his actions. [See: *PLN*, June 2013, p.43]. Shirvell appealed the jury

verdict to the Sixth Circuit on October 10, 2013; his appeal remains pending.

### New York

Darrell Dula, 25, was released from the Rikers Island jail in New York City in April 2012, where he had served ten months while facing a rape charge. In fact, the victim had recanted the rape accusation the day after she made it. She even signed a recantation, and had made similar allegations a year earlier that she had also recanted.

That information was not provided to Dula's defense counsel, however, leading to an indictment and Dula spending almost a year in jail pending trial. Prosecutor Abbie Greenberger said her boss, Lauren Hersh, had pressured her to proceed with the case. Greenberger claimed she was not aware of the recantation documents, which, after another prosecutor took over, were found to be missing from the case file.

The charges against Dula and three co-defendants were later dropped, and Dula filed separate lawsuits against the City of New York and the Kings County District Attorney's Office. Hersh resigned in May 2012 following an internal review by the



**JailCallsUSA**  
**\$9.95** per month  
**\*UNLIMITED JAIL CALLS\***  
**"WE BEAT ALL OUR COMPETITORS"**  
**SWITCH TO US TODAY!!**  
 No Contracts  
 No Credit Checks  
 No Equipment to buy  
**LOWER THE CALL RATES FOR:**  
 GLOBAL TEL LINK  
 SECURUS  
 V-CONNECT  
 PAYTEL  
 ICSOLUTIONS  
 VAC  
 PLUS MORE  
**FEDERAL \* STATE \* COUNTY**  
 SAME DAY ACTIVATION - NO PER MINUTE CHARGES ON OUR END. JUST \$9.95 A MONTH!  
**GET A LOCAL NUMBER TODAY**  
**888-776-2012**  
**www.JailCallsUSA.com**  
 Online Payments Accepted   



**Help From Outside, For Humanity Inside.**  
*Offering basic services on the outside.*

FINANCE & BUSINESS  
 SOCIAL NETWORKING  
 PARALEGAL  
 ADMINISTRATIVE  
 INFORMATION  
 PHONE  
 CREATIVE

**HFO HELP FROM OUTSIDE**

Help From Outside understands what you're going through. We can help you accomplish the things you need to get done but can't.

We offer:  
 - High standards & ethics  
 - Timely & professional services  
 - Personal touch

"HFO has excellent business etiquette and ethics."  
 - T. Brown

"I like that you sent a personal letter. HFO is more personable than your competitors."  
 - A. Mitchell

**WE'VE MOVED! PLEASE CONTACT US AT OUR NEW ADDRESS:**  
 For a brochure and application please send a SASE to:  
 Help From Outside | 2620 Bellevue Way NE #200 | Bellevue, WA 98004  
 206.486.6042 | [www.helpfromoutside.com](http://www.helpfromoutside.com)

## Prosecutors Breaking Bad (cont.)

DA's office that found she had acted inappropriately.

During a sworn deposition on December 19, 2013, former Brooklyn district attorney Charles J. Hynes admitted he had held witnesses in criminal cases against their will in hotel rooms – a practice he denied when he ran for reelection earlier that year.

"They were not free to leave; so sure, they were prisoners," he stated, though he later said he meant the courts were responsible, as judges had signed material witness warrants.

Hynes was deposed in a lawsuit filed by Jabbar Collins, who served 16 years in prison for murder before his conviction was reversed in 2010. A key witness in the case testified that the chief prosecutor, Michael F. Vecchione, had threatened to assault him or charge him with perjury if he didn't testify against Collins. The witness was kept in jail for a week, then held in a hotel room for another week under armed guard.

The federal court that reversed Collins' conviction called prosecutors' actions in the case "shameful," including their failure to inform defense counsel that witnesses had recanted their testimony or been held against their will. Vecchione announced his retirement from the DA's office in November 2013.

*The New York Times* reported in June 2014 that the city's Department of Investigation had issued findings that accused Hynes of using funds seized in criminal

cases to pay a political consultant – a former DA employee – almost \$220,000 to work on Hynes' unsuccessful reelection campaign. He had also hired state Supreme Court Justice Barry Kamins to assist with his campaign, which was a significant conflict of interest. Pursuant to an agreement with the state Commission on Judicial Conduct, Kamins agreed to retire from the bench. In August 2014, a grand jury began considering potential criminal charges against Hynes.

Collins settled his wrongful conviction suit against the City of New York and two police detectives for \$10 million on September 19, 2014. He had previously settled a lawsuit against the state for \$3 million. See: *Collins v. City of New York*, U.S.D.C. (E.D. NY), Case No. 1:11-cv-00766-FB-RML.

On March 21, 2014, Bronx Criminal Court Judge John Wilson sharply criticized assistant district attorney Megan Teesdale in a rape case involving defendant Segundo Marquez. Wilson accused Teesdale of failing to disclose that the victim initially told police she had consensual sex with Marquez in exchange for money.

The judge said it was the most "egregious" violation he had seen, stated Teesdale's conduct amounted to "gross negligence" and ordered her not to appear in his court again. The charges against Marquez were dropped after he had spent eight months in jail. Teesdale said the failure to disclose was a mistake due to multiple prosecutors handling the case.

Ironically, Judge Wilson is now facing an investigation by the State Commission on Judicial Misconduct for criticizing Teesdale and barring

her from his courtroom. Teesdale reportedly did not face any discipline from the DA's office.

## North Carolina

The badly botched prosecution of the 2006 Duke University lacrosse rape case resulted in the resignation of Durham County district attorney Mike Nifong. Despite a lack of evidence indicating their involvement in the alleged crime, three Duke lacrosse players were charged with rape, kidnapping and sexual offense. They were later exonerated.


Nifong was disbarred in June 2007 for ethics violations, including lying about DNA evidence that had been withheld by his office. He also was held in criminal contempt and served one day in jail. "Mr. Nifong did not act as a minister of justice, but as a minister of injustice," said Doug Brocker, an attorney with the North Carolina State Bar.

## Oklahoma

Oklahoma prisoner Michelle Murphy, 37, was exonerated and released in May 2014 after serving 20 years of a life sentence for murdering her infant son. According to an October 12, 2014 *Tulsa World* news report, Tulsa County prosecutor Tim Harris told jurors at Murphy's trial that "police found someone's blood near her slain baby's body – blood he implied could be hers."

However, according to Murphy's attorneys, at the time of the trial Harris had a report from the Oklahoma State Bureau of Investigation that indicated the blood found at the crime scene had a different blood type than Murphy's.

Harris argued he did not withhold evidence and had shown the report to Murphy's defense team – a claim they disputed. He opposed a request to unseal documents in the case.



# STAND UP FOR YOUR PEOPLE

A book about Native American religious rights  
in prison. Non-fiction, 300 pg. E-book \$4.25

Order Today  
**Only \$14.95**  
3.99 s/h  
SOFT COVER

Midnight Express Books  
Box 69, Berryville, AR 72616  
[www.MidnightExpressBooks.com](http://www.MidnightExpressBooks.com)  
<http://standup4yourpeople.wordpress.com>


## EXECUTIVE CLEMENCY

For Info. On Sentence Reduction through  
Executive Clemency:

### NATIONAL CLEMENCY PROJECT

3907 N. Federal Highway, # 151  
Pompano Beach, FL 33064  
954-271-2304  
[nationalclemencyprojectinc.com](http://nationalclemencyprojectinc.com)

**(35-Years of Clemency & Parole Assistance)**  
**(Transfers Under The Int'l Prisoner Treaty)**





“There was so much misconduct. So much exculpatory evidence that was not produced. There was a great deal of deception,” said one of Murphy’s appellate attorneys, Sharisse O’Carroll.

Harris has not been disciplined in connection with the case, though he announced in November 2013 that he would not seek re-election.

## Tennessee

On December 23, 2013, the Tennessee Supreme Court publicly censured Shelby County assistant district attorney Thomas D. Henderson for misconduct in a death penalty case, following a complaint filed by the Office of the Tennessee Post-Conviction Defender. Henderson was accused of failing to tell defense counsel about an eyewitness who saw two other suspects with blood on their hands at the crime scene, and who identified one of those suspects in a photo lineup. He did not pick the photo of the defendant, Michael Dale Rimmer, who was later convicted of murder and sentenced to death.

When Rimmer’s attorneys asked for *Brady* materials prior to trial, instead of producing the eyewitness report and identification of another suspect, Henderson wrote: “[T]he State of Tennessee is now unaware of any evidence which tends to exculpate the defendant of the crime charged against him.”

Henderson agreed to the censure, and was also ordered to pay \$1,745.07 for the cost of the misconduct investigation. Rimmer’s murder conviction was overturned in 2012; he faces a retrial, and the Shelby County District Attorney’s Office has recused itself from his case, calling it a “distraction.” Meanwhile, Rimmer remains on death row.

## Texas

During a 2012 trial involving a defendant accused of injuring a child, then-Polk County assistant district attorney Kaycee Jones and the judge over the case, Elizabeth Coker, exchanged *ex parte* texts about the prosecution’s trial strategy. Judge Coker apparently initiated the texts, and Jones relayed them to the lead prosecutor.

The incident was reported by another member of the prosecution team, and in May 2014, Jones – now a state district judge – received a public reprimand and \$650 fine from the Texas Bar Association. She agreed to the reprimand, which cited her for “professional misconduct” for inappropriate communication with Judge Coker, who resigned from the bench in December 2013 amid a judicial misconduct investigation.

Jones’ sanction was widely criticized as being overly lenient, particularly since she was suspected of engaging in *ex parte* communications with Coker in other cases, too.

## Utah

On July 14, 2014, John Swallow and Mark Shurtleff, both former Utah Attorneys General, were arrested by agents with

the FBI and Utah Department of Public Safety and charged with numerous state felony offenses that included tampering with evidence, taking bribes, obstructing justice, misuse of public funds and making false statements.

The charges center on relationships Shurtleff and Swallow had with wealthy defendants, including Jeremy Johnson and Marc Sessions Jenson. Shurtleff allegedly used Johnson’s private plane to fly to California and New York, while Swallow is accused of using Johnson’s houseboat and Ferrari while serving in the Attorney General’s office.

Johnson faced federal fraud charges, and Jenson had been charged with securities fraud. The criminal charges against Swallow and Shurtleff remain pending.

## West Virginia

As part of a corruption investigation involving public officials in Mingo County, West Virginia, prosecutor Michael Sparks was charged with conspiring to conceal drug-related activities that involved county sheriff Eugene Crum, by violating the constitutional rights of a defendant who had planned to testify against the sheriff.

Sparks resigned in October 2013 and was disbarred. [See: *PLN*, Nov. 2013, p.42]. He subsequently pleaded guilty, and on July 7, 2014 was sentenced to one year in prison followed by a year on probation, plus a \$500 fine. ■

**PENACON.COM**

Helping the incarcerated community gain connections around the world!

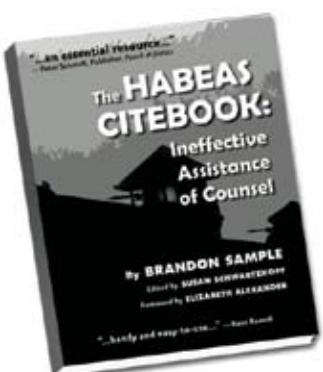
Post your profile on an easy to navigate website for millions of viewers to see. Gain new penpals and look forward to receiving mail!

One Year Ad Only \$35  
Until Release Date Ad \$95

Request a form today!  
Send a S.A.S.E. to:  
Penacon.com  
P.O. Box 1037  
Edna, TX 77957



USE CODE  
PLN5OFF  
FOR \$5 OFF



## FREE BOOK!

Get ***The Habeas Citebook*** with purchase of a 4-year subscription to *Prison Legal News*. Offer good for new subscriptions and renewals.

Special limited time only! All sales final and no refunds. Order now for this great deal worth \$49.95.

**Prison Legal News • PO Box 1151 • Lake Worth, FL 33460**

Tel [561] 360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

# From the Editor

by Paul Wright

OVER THE PAST 24 YEARS *PLN* HAS reported extensively on the structural dynamics of the American police state, which have resulted in the imprisonment of over 2.3 million people on any given day. Critical to mass incarceration is a quick assembly-line judicial process with little regard to whatever nominal rights people may have under various constitutions or statutes.

Thus, for mass incarceration to be successful, poor defendants need to be deprived of effective legal counsel; crime labs need to be dedicated to producing evidence that results in convictions and not engaged in independent scientific endeavors; the judiciary must be compliant with and complicit in the goal of obtaining convictions at any cost; and prosecutors have to be allowed to do whatever they feel is necessary to win cases. Which is essentially how the U.S. criminal justice system operates.

As anyone who observes our justice system knows, prosecutorial misconduct is rampant, pervasive and goes relatively unpunished; presumably, if abuses by prosecutors were adequately reported and sanctioned, they would be a rarity. Yet courts continue to find misconduct on a disturbingly regular basis. As this month's cover story makes clear, this is a systemic problem that requires systemic solutions.

On October 22, 2014, the Federal Communications Commission issued a second Further Notice of Proposed Rule-making on reforms to Inmate Calling Services (ICS). *PLN* co-founded the Campaign for Prison Phone Justice in 2011 and has pressured the FCC to regulate the high cost of prison phone calls. Beginning last year, they finally started doing so.

We need your help to get the FCC to implement meaningful ICS reforms by capping the cost of intrastate (in-state) prison and jail phone calls, as well as eliminating "commission" kickbacks to corrections agencies and ancillary fees. See the ad on p.2 for what you and your family can do to support the Campaign.

One way to help is to make a donation to *Prison Legal News* and the Human Rights Defense Center, the non-profit organization that publishes *PLN*. For the past three years we have dedicated all our fundraising to the Campaign for Prison Phone Justice, to achieve ICS reforms and regulation. We are the *only* organization submitting detailed information and hard data to the FCC on the actual cost of prison phone calls and commission kickbacks.

Collecting, analyzing and making this information publicly available is extremely time consuming and expensive. The few modest grants we received to help start the Campaign ran out long ago and we urgently need your support to continue the struggle for prison phone justice. All of your donations, no matter how large or small, will be used to further our advocacy efforts.

To learn more about prison phone justice, visit [www.prisonphonejustice.org](http://www.prisonphonejustice.org), which contains the phone contracts, rates and commission data for the prison systems in all 50 states, the federal Bureau of Prisons and a number of jails. To get involved in the Campaign, visit [www.phonejustice.org](http://www.phonejustice.org), or for our Washington State campaign, [www.wappj.org](http://www.wappj.org).

If you believe prisoners and their families should not be price-gouged and exploited by greedy telecom companies and their government allies, then please make

a donation to help end these egregious practices. If you benefited from the FCC's cap on interstate prison and jail phone rates, then please consider donating the money you saved so we can finish the fight and cap the rates for in-state calls, too.

All *PLN* subscribers will soon receive our annual fundraiser letter, which will give our readers a better idea of what we do on behalf of prisoners and their families. You can donate to support our work by mailing a check or money order, or by phone or online using a credit card. Please encourage others to donate as well.

You can also purchase gift subscriptions to *PLN* individually or in bulk through our Subscription Madness campaign. See the ad on p.31 for details.

Since we re-launched Subscription Madness, which allows the discounted purchase of multiple gift subscriptions for people who have never been a *PLN* subscriber before, we have received some complaints from long-time subscribers because the discount is not available for renewals. The purpose of Subscription Madness is to grow our subscriber base so we can keep our costs down; we hope that after reading *PLN* for a year, new subscribers will want to renew at our regular subscription rates.

We spend a lot of time and resources on expanding our subscriber base, and with Subscription Madness we pass along the savings of not having to mail sample copies to potential subscribers by not increasing our rates. But the Subscription Madness promotion is not intended to be a slight to our long-time subscribers, to whom we offer other benefits for multi-year renewals, including free books or extra issues of *PLN*.

Lastly, with the holiday season approaching, consider giving friends and loved ones a gift subscription to *PLN* or some of the many books we distribute. Our next self-published title, the *Disciplinary Self-Help Litigation Manual* by Dan Manville, is currently in production and will be available soon. You can order it now for \$49.95, shipping included – see the ad on p.11.

Enjoy this issue of *PLN* and please encourage others to donate and subscribe.



**inmateMAGS** .com  
formerly MyMagstore.com

Buy 1200 **SINGLE** Copies of Magazines • 1200 **Subscriptions** • **VIP Service**  
1800 **Newspapers** • Payment with **Stamps** • **Prepaid Accounts**  
Send \$3 or 10 Stamps for **50+ Page Full Catalog** (\$3 Discount Coupon Included)

**InmateMAGS.com**  
4208 University Way NE  
Seattle, WA 98105

**www.inmateMAGS.com**  
Info@inmateMAGS.com  
206-322-6397

## CHEAP LOCAL FEDERAL CALLS

*Get a local Number & Save up to 85% on Prison Calls with Sentel.  
Save on International Calls with Sentel.*

**For Packages USA, Canada and Puerto Rico only:**

<b><u>ECONOMY PLAN (USA)</u></b>	<b><u>3-MONTH PLAN (USA)</u></b>	<b><u>6-MONTH PLAN (USA)</u></b>	<b><u>12-MONTH PLAN (USA)</u></b>
<b>Price: \$14.99</b> For the first line	<b>Price: \$41.99</b> For the first line	<b>Price: \$71.99</b> For the first line	<b>Price: \$119.99</b> For the first line
<b>400 Minutes per Month</b> Duration: 1 Month	<b>400Mns per Month</b> Duration: 3 Months	<b>400Mns per Month</b> Duration: 6 Months	<b>400 Mns per Month</b> Duration: 12 Months
Additional lines @ \$2 each Best up to 4lines Monthly	Additional lines@ \$4.5 each Best up to 4lines	Additional lines @ \$6 each Best up to 4lines	Additional lines @ \$12ea Best up to 4 lines

### **For USA & INTERNATIONAL PLANS PER MINUTE RATE**

<b><u>USA &amp; INTERNATIONAL</u></b>		
<b>Price for 1st line: \$1</b> <b>Activation Fee: \$1</b>  Add a line: 50 cents Rates Based Upon Destination Guaranteed lowest rates Rollover Minutes Great for Multiple Lines	USA: 6 cents for All Mexico landline: 10 cents Mexico Cellphone: 15cents Colombia: 15 cents Nigeria: 22cents Most of Europe: 22 cents Honduras: 22 to 29 cents Guatemala: 22 to 29 cents Jamaica: 29 cents	Dominican Rep: 15 cents Haiti: 35 cents India: 10 cents China: 10 cents Ecuador: 29 to 35 cents Most of our International rates : 22cents For Areas not Cited Please contact us

**We accept debit and credit card payments, institutional checks, bank deposits and paypal**

**Sentel, Sentel**

**9550 S. Eastern Ave Ste 253**

**Las Vegas, NV 89123**

**Ph: 702-430-9445**

**Email: [sentel.nv@gmail.com](mailto:sentel.nv@gmail.com)**

**Website: [www.sentelinmatecall.com](http://www.sentelinmatecall.com)**

**Note : Please do not send any inquiries by mail. Mail is only for orders and payments.**

**Note: We do not provide service to County Jails and States Prisons**

# Death Sentences Reversed Due to Prosecutorial Misconduct

by Christopher Zoukis

**D**EATH SENTENCES IMPOSED ON PRISONERS in Arizona, Virginia and Tennessee have been reversed by federal appellate courts as a result of misconduct by prosecutors – including withholding evidence and making improper closing arguments.

## Abuses by Arizona Prosecutors

AN ARIZONA PRISONER WHO SPENT MORE than two decades on death row after allegedly confessing to a police detective that she participated in the 1989 murder of her 4-year-old son was released on \$250,000 bond on September 6, 2013.

Debra Jean Milke, 50, was freed after the detective who claimed she confessed to him stated he would refuse to testify at Milke's retrial, citing his Fifth Amendment right against self-incrimination.

Retired Phoenix police detective Armando Saldate, Jr. invoked his Fifth Amendment rights after the U.S. Court of Appeals for the Ninth Circuit vacated Milke's death sentence in March 2013 and directed the clerk to send copies of the opinion to federal authorities for "possible investigation into whether Detective Saldate's conduct ... amounts to a pattern of violating the federally protected rights of Arizona residents."

The appellate court's ruling came after Milke learned that prosecutors had withheld information about at least eight cases in which confessions, indictments or convictions had been thrown out because Saldate lied under oath or committed other misconduct.

Saldate's credibility was essential to the case presented by the Maricopa County District Attorney's Office, because he claimed that Milke had confessed to taking part in her son's murder during an interrogation in a closed room. His interview with Milke was not recorded, and Saldate told the jury he had destroyed his notes of the interview.

Milke denied ever making such a statement, but the jury was not informed of Saldate's history of lying under oath. As the confession was the only direct evidence against Milke, the Court of Appeals reversed her conviction.

"No civilized system of justice should have to depend on such flimsy evidence,

quite possibly tainted by dishonesty or overzealousness, to decide whether to take someone's life or liberty," wrote Ninth Circuit Judge Alex Kozinski. See: *Milke v. Ryan*, 711 F.3d 998 (9th Cir. 2013).

Saldate's refusal to testify in a retrial likely means Milke's confession will not be admitted, and without it "there's really no case" noted her attorney, Michael Kimerer.

Milke was convicted on charges of murder, kidnapping, conspiracy and child abuse on October 12, 1990 – less than a year after her housemate, James Styers, and another man drove her son, Christopher, to a secluded ravine and shot him three times in the head, allegedly to collect on a life insurance policy. Milke had sent her son with Styers to see Santa Claus at a mall on the day the 4-year-old was murdered. Styers and a co-defendant were convicted of first-degree murder and sentenced to death.

Milke's retrial is scheduled for January 2015; she has challenged the second trial on double jeopardy grounds, citing prosecutorial misconduct. Saldate may be forced by the court to testify.

## Death Sentence Vacated in Virginia

JUSTIN M. WOLFE, A VIRGINIA PRISONER convicted of capital murder in 2002, won a new trial after a federal district court overturned his conviction and death sentence in December 2012. The court found that prosecutors had engaged in gross misconduct by failing to disclose that the triggerman in the case had been encouraged to testify that Wolfe hired him to shoot rival drug dealer Danny Robert Petrole, Jr.

U.S. District Court Judge Raymond A. Jackson found the prosecution's conduct so egregious that he not only vacated Wolfe's conviction and ordered his release, but also prohibited the Commonwealth of Virginia from re-prosecuting him for the murder of Petrole if any such prosecution involved the testimony of triggerman Owen M. Barber IV. Barber admitted to investigators that he had presented false testimony to avoid the death penalty himself.

While Judge Jackson's re-prosecution order was later overturned by the Fourth Circuit Court of Appeals, retrying Wolfe

without Barber's testimony would be "tenuous" at best, according to Jackson. In May 2013, the Fourth Circuit affirmed the district court's order that Wolfe be released from prison pending any retrial. See: *Wolfe v. Clarke*, 718 F.3d 277 (4th Cir. 2013), cert. denied.

The Commonwealth's prosecution team was found to have engaged in a wide array of misconduct in prosecuting Wolfe for the March 2001 murder of Petrole, the son of a retired Secret Service agent and the kingpin of one of Virginia's largest-ever drug rings. That misconduct included choreographing and coordinating witnesses' testimony, withholding tapes of witness interviews from the defense and knowingly allowing false testimony to be introduced at trial.

According to Judge Jackson, Prince William County Commonwealth's Attorney Paul B. Ebert – who has sent more defendants to death row in Virginia than any other prosecutor – failed to turn over a report showing it was police detectives who first introduced the idea to Barber that Wolfe masterminded the murder of Petrole, and who gave Barber the option of implicating Wolfe or facing the death penalty. Ebert's staff had suppressed evidence indicating that Barber confessed to his roommate that he had acted alone, the court found.

In 2005, Barber signed an affidavit swearing that he was offered a plea bargain that spared him the death penalty if he falsely testified that Wolfe had hired him to kill Petrole.

"Justin had nothing to do with the killing ... I lied and implicated Justin because I felt I had no choice ... I had to choose between falsely testifying against Justin or dying," he said. Barber received 38 years in prison after testifying against Wolfe.

Wolfe's attorneys have alleged that as late as September 2012, Ebert and another prosecutor, Richard Conway, threatened Barber during a jailhouse visit, telling him he could face the death penalty for recanting his testimony, which violated his plea agreement.

"The Commonwealth's representatives incessantly bombarded Mr. Barber with both veiled and overt threats of re-prosecu-



tion, suggestive statements about how they knew what the real truth was, attempts to turn Mr. Barber against attorneys who represented him ... and emotional pleas involving religion,” Wolfe’s defense counsel stated.

Wolfe had spent over a decade on death row; he was denied bond after being re-indicted for Petrole’s murder, and remains incarcerated pending another trial.

Ebert, who has recused himself from the case, had previously been criticized by the Fourth Circuit in another death penalty case involving John Allen Muhammad, one of the D.C. Beltway snipers, for withholding evidence from defense attorneys. The appellate court held that the withheld evidence was not material in that case, and Muhammad was executed in 2009.

### Tennessee Prosecutor Made Improper Remarks

A PROSECUTOR’S OVER-THE-TOP CLOSING statement during a capital trial’s sentencing phase – which included comparing the defendant to “the devil incarnate” and referencing cannibal murderer Jeffrey Dahmer, the Lord’s Prayer and other inappropriate comments – resulted in a new sentencing hearing for Ronnie M. Cauthern, convicted of raping and killing an Army nurse in 1987.

Cauthern’s death sentence was vacated by a panel of the Sixth Circuit Court of Appeals on November 14, 2013, which also found that his defense attorney failed to present a coherent defense during the sentencing phase.

Cauthern’s resentencing will be his third for the murder of Rosemary Smith, a captain in the U.S. Army Nurse Corps, who was killed along with her husband, Patrick Smith, also an Army captain and nurse. Cauthern’s initial death sentence was set aside after a judge improperly allowed jurors to hear a post-arrest statement Cauthern made to the police, and he was again sentenced to death in 1995.

The murders of the Smiths at their home in Clarksville, Tennessee were gruesome, according to then-Assistant Attorney General Steve Garrett, who appeared for the state in the 1995 resentencing hearing. Cauthern and a co-defendant allegedly placed Rosemary Smith in a closet and forced her to listen as her husband was killed in the next room. She was then raped and strangled with a scarf in a “protracted

event” that resulted in her death.

In his closing arguments during the sentencing phase, Garrett invoked the name of the devil several times and referred to Cauthern as “the evil one” who “appeared in Minnesota in the form of Jeffrey Dahmer and ... appeared at the door of Patrick and Rosemary Smith.”

He continued: “You cannot negotiate with the evil one, ladies and gentlemen. You cannot deal in good faith with the evil one. You have got to destroy and destroy, or he and his benefactors will destroy you. He’ll destroy us. He’ll destroy our children. The evil one took the name of Ronnie Cauthern on that day. That was his name, and he’s beyond redemption.... Engage him in combat and destroy him. Do your duty....”

Garrett also invoked the Lord’s Prayer and The Rolling Stones’ song “Sympathy for the Devil,” and suggested the jury could “send a message to the evil one.”

The Tennessee Supreme Court found that those closing remarks did not unfairly prejudice Cauthern, though it did caution prosecutors against making similar statements in the future. A U.S. District Court judge apparently agreed, noting, among

other points, that Garrett’s comments “were not likely to have convinced the jury that [Cauthern] was, in fact, the devil incarnate.”

In reversing the district court, Sixth Circuit Judge Eric Clay wrote, “While that may be true, its real relevance is that it highlights the outlandish nature of the prosecutor’s remarks ... one would need not to believe that [Cauthern] was himself the devil in order to be improperly inflamed such that the verdict cannot be trusted.”

Accordingly, Cauthern’s death sentence was reversed and the case remanded to the state trial court for resentencing. See: *Cauthern v. Bell*, 2013 U.S. App. LEXIS 22944 (6th Cir. 2013), *rehearing and rehearing en banc denied*. ■

Additional sources: *Associated Press*, [www.abc15.com](http://www.abc15.com), [www.azfamily.com](http://www.azfamily.com), [www.cnn.com](http://www.cnn.com), [www.azcentral.com](http://www.azcentral.com), [www.tennessean.com](http://www.tennessean.com), [www.timesfreepress.com](http://www.timesfreepress.com), <http://valawyersweekly.com>, [www.wusa9.com](http://www.wusa9.com), [www.prosecutorialaccountability.com](http://www.prosecutorialaccountability.com), [www.slate.com](http://www.slate.com), *Washington Post*, [www.timesdispatch.com](http://www.timesdispatch.com)

## SUBSCRIPTION MADNESS 2014

Our Subscription Madness promotion has been so successful in the past that we have decided to offer it again!

PLN is offering a discount on blocks of 2 or 4 one-year subscriptions for any person not a current or former subscriber who has a U.S. address, whether they are imprisoned or not. Subscription Madness is the only opportunity attorneys, librarians and corrections professionals have to receive a PLN subscription at a fraction of the normal rate of \$90 per year, and for prisoner family members and concerned activists to subscribe at a steep discount from the normal rate of \$35 per year. Prisoner subscriptions are also less than the normal \$30 per year. Check out these discounts!

- **\$50 buys 2 one-year subscriptions (\$25 each)**
- **\$80 buys 4 one-year subscriptions (\$20 each)**

If you want to take advantage of Subscription Madness but are stumped for people to send them to, PLN can provide names of indigent prisoners who would love a PLN subscription. Use a separate piece of paper to order by mail, call our office to order with a credit card, or go to our website to order online. **No Renewals!** Sorry, but Subscription Madness is for new one-year subscriptions only, and cannot be used to renew or extend a current or former subscription. PLN is a 501(c)(3) non-profit. (Subscription Madness 2014 expires 12-31-2014).

**Prison Legal News, PO Box 1151, Lake Worth, FL 33460**  
**561-360-2523; [www.prisonlegalnews.org](http://www.prisonlegalnews.org)**

# Wells Fargo Bankrolls Private Prison Companies, Immigrant Detention

**W**HILE WELLS FARGO & COMPANY has sold off much of the stock it once owned in private prison company GEO Group amid a divestment campaign targeting the multi-billion-dollar bank, it has concurrently increased its shares in Corrections Corporation of America (CCA).

After initially selling off around 33% of its holdings in GEO Group stock in 2012, Wells Fargo continued to divest from GEO in the mutual funds it controlled. As of June 30, 2014, the bank owned 7,425 shares of GEO valued at over \$272,000; previously, it had owned 4 million shares. However, Wells Fargo has steadily increased its stake in CCA and owned 1.08 million shares in the company valued at \$36.6 million as of June 30, 2014.

Peter Cervantes-Gautschi, executive director of Enlace, a non-profit organization that has convened a National Private Prison Divestment Campaign, congratulated the bank on “its well-advised decision to dump the private prison stock” in GEO Group. He called on the financial industry giant to “rid itself of the rest of its private prison holdings and to cease financing private prison companies.”

A divestment campaign protest outside a Wells Fargo branch in Nashville, Tennessee on July 1, 2011 involved a sidewalk demonstration and participants closing their accounts at the bank, including PLN managing editor Alex Friedmann. Similar protests were held in at least 13 other cities.

A September 2012 report issued by two watchdog groups identified Wells Fargo as

the “issuing lender” on CCA’s \$785 million line of credit and the bookkeeper for \$300 million of GEO Group’s corporate debt. The joint report, by National People’s Action and the Public Accountability Initiative, also noted that Management and Training Corporation (MTC), the nation’s third-largest private prison firm, borrows money from Wells Fargo.

The report argued that with those millions in loans and investments, private prison companies are able to shape immigration policy by influencing lawmakers – e.g., through political lobbying and campaign donations.

Both GEO Group and CCA operate immigrant detention facilities. According to filings with the Securities and Exchange Commission, the companies rely heavily on revenue from detention contracts with Immigration and Customs Enforcement (ICE).

“As a major investor in and lender to the private prison industry, Wells Fargo is at the center of the industry’s vicious cycle,” the report stated. “This cycle involves profiting from the detention of vulnerable immigrant communities by understaffing the prisons and cutting costs so that basic food and medical needs are not met.” If the bank withdrew its support, “this cycle would break down.”

Wells Fargo disputed the report’s findings, however, and defended its lending practices by claiming that it’s just one of several banks – acting on behalf of third-party investors – that do business with CCA, GEO and MTC. Other major institutional investors in GEO Group include Credit Suisse, Vanguard Group, Eagle Asset Management, FMR, Ameriprise Financial and State Street.

Further, the bank argued that it owned private prison stock through its mutual funds, not directly. According to Wells Fargo spokesman Alan Elias, fund managers “must make investment decisions for the benefit of investors and independent of the interests of Wells Fargo Bank.” In an email sent to Progress Illinois, Elias explained that, by law, mutual funds are “segregated” from Wells Fargo’s own assets; thus, it has no personal stake in the for-profit prison industry.

The bank’s website goes further in defending its position on human rights, stating: “Wells Fargo recognizes that governments have the duty to protect human rights, and our company has a responsibility to respect human rights. To that end, we strive to respect human rights throughout our operations, products and services.”

Ironically, Wells Fargo has targeted Hispanics as new bank customers at the same time it provides financial services to and invests in private prison companies that operate immigration detention centers.

“Wells Fargo invests a lot of money in marketing to the Latino communities,” noted Nicole Melaku with Rights for All People, an immigrant-rights organization. “But the investment in the GEO Group has all sorts of conflicts of values for a company that prides itself on integrity.”

Kevin Connor, director of the Public Accountability Initiative, said Wells Fargo is the only major bank with strong ties to the three largest private prison companies. He also challenged the bank’s willingness to do business with them.

“From any sort of moral and ethical perspective, supplying critical financing to this industry is wrong,” Connor stated. “If you look at Wells Fargo’s own marketing materials, they claim to be responsible in their business practices. [But] this is clearly an irresponsible use of their customers’ money.”

The joint watchdog report also documented abuses inside private prisons, the industry’s negative impact on the U.S. economy and Wells Fargo’s past responses to community pressure. In 1977, for example, the bank loaned millions to the South African government despite its egregious practice of apartheid. It took seven years before Wells Fargo succumbed to protests and refused to renew or make new loans to South Africa until apartheid ended. ■

Sources: *Progress Illinois*; “Jails Fargo: Banking on Immigrant Detention,” *National People’s Action/Public Accountability Initiative* (September 2012); [www.wellsfargo.com](http://www.wellsfargo.com); [www.cjfc.org](http://www.cjfc.org); [www.mffais.com](http://www.mffais.com); *National Private Prison Divestment Campaign*; [www.pcasc.net](http://www.pcasc.net); *Westword*; [www.truth-out.org](http://www.truth-out.org)

**SMITH'S GUIDE to  
HABEAS CORPUS RELIEF**  
for State Prisoners under 28 U.S.C. §2254

Example pleadings from the initial habeas corpus petition to the final petition for a writ of certiorari. Let Smith guide you step-by-step through the federal courts with confidence. 380 pages.

\$24.95 + \$6.95 shipping & handling. In CA add \$2.18 sales tax. Sent via USPS media mail. Money orders, personal or institutional checks ONLY. Send \$31.90 (In CA, \$34.08) payable to Roberts Company.

Send name, address, prisoner #, and payment to:  
**Roberts Company, 15412 Electronic Lane #101  
Huntington Beach, CA 92649**  
Also available on Amazon.com



## Inmate Magazine Service

---

### An Open letter to Prisoners in North America

Dear Sir/Madam,

It sucks to be locked up during the Holidays and we encourage you to hang in there and improve yourself in every way that you can.

We wanted to let you know that we are going to include one free magazine subscription of your choice from the list on the back of this letter **at no charge to you** with every paid order. You will find a coupon in this issue of PLN which you can mail in for one free subscription. One per prisoner ONLY. This free subscription needs no purchase but there is a limit to one per North American Inmate. This special runs October 2014 through January 2015 ONLY.

We are doing this to let you know that our hearts are with you during the holidays and to help you get through this difficult time.

Our friends with Prison Legal News want you to know that we are all dedicated to keeping your rights to quality reading material as it should be. We are going to protect First Amendment Rights with all our might!

Please enjoy your free subscription from your friends at PLN and IMS!

Best Regards

RS

Director

Inmate Magazine Service, Inc.

PS: IMS has donated over 1,000,000 Magazine Subscriptions to North American Prisoners over the past 4 years!

Coupon: To receive your one free magazine subscription, contact IMS at the address below and mention this special offer in *PLN*! See the next page for a list of available magazines.

P.O. Box 2063, Fort Walton Beach, FL 32549  
[www.InmateMagazineService.com](http://www.InmateMagazineService.com)



Stay in touch with a good Magazine!  
Get 6 Full One Year Subscriptions

**ONLY \$20!**  
+ \$5.99 p&h

Check your 5 magazines and underline three backup choices (in case of unavailability)

**"BEST DEAL ON THE POUND!"**

- ☐ THE ATLANTIC (10)
- ☐ BON APPETIT (12)
- ☐ WEIGHT WATCHERS (6)
- ☐ SELF (12)
- ☐ BACKPACKER (9)
- ☐ OUTSIDE (12)
- ☐ CHARISMA (12)
- ☐ MINISTRY TODAY (6)
- ☐ MIDWEST LIVING (6)
- ☐ WOOD (7)
- ☐ OLD HOUSE JOURNAL (8)
- ☐ YOGA JOURNAL (9)
- ☐ LOG HOME LIVING (9)
- ☐ FREESKIER (6)
- ☐ SNOWBOARD (4)
- ☐ DIABETES SELF-MANAGEMENT (6)
- ☐ NYLON (10)
- ☐ TIMBER HOME LIVING (6)
- ☐ RED BULLETIN MAGAZINE (12)
- ☐ LOW COST COOKING (1)
- ☐ MEXICAN FIESTA (1)
- ☐ ARTHRITIS SELF-MANAGEMENT (6)
- ☐ BOATING (10)
- ☐ BOATING WORLD (9)
- ☐ BOWHUNT AMERICA (6)
- ☐ CAR & DRIVER (12)
- ☐ COUNTRY LIVING (10)
- ☐ DIGITAL PHOTO (7)

- ☐ DIRT RIDER (12)
- ☐ ELLE DECOR (10)
- ☐ FAST COMPANY (10)
- ☐ GLAMOUR (12)
- ☐ GOLF TIPS (5)
- ☐ GOLF WEEK (38)
- ☐ HOT BIKE (12)
- ☐ INC (12)
- ☐ LIFE EXTENSION (13)
- ☐ MARIE CLAIRE (12)
- ☐ MOTORCYCLIST (12)
- ☐ NYLON GUYS (6)
- ☐ OUTDOOR PHOTOGRAPHER (11)
- ☐ PLANE & PILOT-NEW ONLY (12)
- ☐ PREDATOR XTREME (6)
- ☐ SCHOLASTIC PARENT & CHILD (8)
- ☐ SKI (6)
- ☐ SLAM (10)
- ☐ SPORT RIDER (10)
- ☐ UPTOWN MAGAZINE (6)
- ☐ WHITETAIL JOURNAL (6)
- ☐ WIRED (12)
- ☐ ESPN (26)
- ☐ ALLURE (12)
- ☐ MEN'S FITNESS (10)
- ☐ NATURAL HEALTH (6)
- ☐ O (OPRAH) (12)
- ☐ OK! MAGAZINE (52)

- ☐ AMERICAN PHOTO (6)
- ☐ ARTHRITIS TODAY (6)
- ☐ AUTOMOBILE (12)
- ☐ BETTER HOMES & GARDENS (12)
- ☐ BLACK ENTERPRISE (12)
- ☐ BOWHUNTING WORLD (9)
- ☐ BRIDAL GUIDE (6)
- ☐ CONDE NAST TRAVELER (12)
- ☐ COSMOPOLITAN (12)
- ☐ CRUISING WORLD (12)
- ☐ CYCLE WORLD (12)
- ☐ DETAILS (10)
- ☐ EATING WELL (6)
- ☐ EBONY (12)
- ☐ ELLE (12)
- ☐ ENTREPRENEUR (12)
- ☐ ESQUIRE (10)
- ☐ EVERYDAY WITH RACHAEL RAY (10)
- ☐ FAMILY CIRCLE (12)
- ☐ FAMILY FUN (10)
- ☐ FIELD & STREAM (12)
- ☐ FITNESS (10)
- ☐ FLORIDA SPORT FISHING (6)
- ☐ FLYING (12)
- ☐ GOLF DIGEST (12)
- ☐ GOOD HOUSEKEEPING (12)
- ☐ HARPERS BAZAAR (10)
- ☐ INSTRUCTOR (6)

- ☐ ISLANDS (8)
- ☐ LATINA (10)
- ☐ LUCKY (10)
- ☐ MARLIN (8)
- ☐ MEN'S JOURNAL (12)
- ☐ MORE (10)
- ☐ MOTOR TREND (12)
- ☐ OUTDOOR LIFE (12)
- ☐ PARENTS (12)
- ☐ POPULAR PHOTOGRAPHY (12)
- ☐ POPULAR SCIENCE (12)
- ☐ REDBOOK (11)
- ☐ ROAD & TRACK (10)
- ☐ ROLLING STONE (26)
- ☐ SALT WATER SPORTSMAN (10)
- ☐ SAVEUR (9)
- ☐ SEVENTEEN (10)
- ☐ SHAPE (12)
- ☐ SIEMPRE MUJER (6)
- ☐ TEEN VOGUE (10)
- ☐ TENNIS (6)
- ☐ TOWN AND COUNTRY (10)
- ☐ TRANSWORLD MOTOCROSS (12)
- ☐ US WEEKLY (52)
- ☐ VERANDA (6)
- ☐ WOMAN'S DAY (12)
- ☐ WORKING MOTHER (6)
- ☐ YACHTING (12)

OK TO COPY

Check your Extra FREE Magazine Subscription

- ☐ ARTHRITIS TODAY (6)
- ☐ AUTOMOBILE (12)
- ☐ BLACK ENTERPRISE (12)
- ☐ DIRT RIDER (12)
- ☐ EBONY (12)
- ☐ ENTREPRENEUR (12)
- ☐ FAMILY CIRCLE (12)
- ☐ FAMILY FUN (10)
- ☐ FAST COMPANY (10)
- ☐ GLAMOUR (12)
- ☐ GOLF WEEK (38)
- ☐ INC (12)
- ☐ LATINA (10)
- ☐ MEN'S FITNESS (10)
- ☐ MEN'S JOURNAL (12)
- ☐ MOTOR TREND (12)
- ☐ MOTORCYCLIST (12)
- ☐ NATURAL HEALTH (6)
- ☐ NYLON (10)
- ☐ NYLON GUYS (6)
- ☐ OK! MAGAZINE (52)
- ☐ SHAPE (12)
- ☐ TENNIS (6)
- ☐ UPTOWN MAGAZINE (6)
- ☐ WIRED (12)

\* No Renewal

"Tell your Friends and Families!"

\*\*\*\*DUE TO PUBLISHER PROCESSING TIMES, WE WILL NOT UNDER ANY CIRCUMSTANCES CHECK WITH ANY PUBLISHER ABOUT THE STATUS OF ANY MAGAZINE SUBSCRIPTION UNTIL AFTER 90 DAYS HAVE PASSED FROM THE DATE OF PROCESSING YOUR ORDER! NO EXCEPTIONS!\*\*\*\*



**Inmate Magazine Service**

P.O. Box 2063, Fort Walton Beach, FL 32549  
www.InmateMagazineService.com

Name and Inmate # (please print, maximum 24 characters):			
Address:			
City:		State:	Zip:

Allow 6-8 weeks for delivery. Pay by Check, Money Order or Order Online and use Credit Card or PayPal. Keep Address Short!



Stay in touch with a good Magazine!  
Get 6 Full One Year Subscriptions

**ONLY \$20!**  
+ \$5.99 p&h

Check your 5 magazines and underline three backup choices (in case of unavailability)

**"BEST DEAL ON THE POUND!"**

- ☐ THE ATLANTIC (10)
- ☐ BON APPETIT (12)
- ☐ WEIGHT WATCHERS (6)
- ☐ SELF (12)
- ☐ BACKPACKER (9)
- ☐ OUTSIDE (12)
- ☐ CHARISMA (12)
- ☐ MINISTRY TODAY (6)
- ☐ MIDWEST LIVING (6)
- ☐ WOOD (7)
- ☐ OLD HOUSE JOURNAL (8)
- ☐ YOGA JOURNAL (9)
- ☐ LOG HOME LIVING (9)
- ☐ FREESKIER (6)
- ☐ SNOWBOARD (4)
- ☐ DIABETES SELF-MANAGEMENT (6)
- ☐ NYLON (10)
- ☐ TIMBER HOME LIVING (6)
- ☐ RED BULLETIN MAGAZINE (12)
- ☐ LOW COST COOKING (1)
- ☐ MEXICAN FIESTA (1)
- ☐ ARTHRITIS SELF-MANAGEMENT (6)
- ☐ BOATING (10)
- ☐ BOATING WORLD (9)
- ☐ BOWHUNT AMERICA (6)
- ☐ CAR & DRIVER (12)
- ☐ COUNTRY LIVING (10)
- ☐ DIGITAL PHOTO (7)

- ☐ DIRT RIDER (12)
- ☐ ELLE DECOR (10)
- ☐ FAST COMPANY (10)
- ☐ GLAMOUR (12)
- ☐ GOLF TIPS (5)
- ☐ GOLF WEEK (38)
- ☐ HOT BIKE (12)
- ☐ INC (12)
- ☐ LIFE EXTENSION (13)
- ☐ MARIE CLAIRE (12)
- ☐ MOTORCYCLIST (12)
- ☐ NYLON GUYS (6)
- ☐ OUTDOOR PHOTOGRAPHER (11)
- ☐ PLANE & PILOT-NEW ONLY (12)
- ☐ PREDATOR XTREME (6)
- ☐ SCHOLASTIC PARENT & CHILD (8)
- ☐ SKI (6)
- ☐ SLAM (10)
- ☐ SPORT RIDER (10)
- ☐ UPTOWN MAGAZINE (6)
- ☐ WHITETAIL JOURNAL (6)
- ☐ WIRED (12)
- ☐ ESPN (26)
- ☐ ALLURE (12)
- ☐ MEN'S FITNESS (10)
- ☐ NATURAL HEALTH (6)
- ☐ O (OPRAH) (12)
- ☐ OK! MAGAZINE (52)

- ☐ AMERICAN PHOTO (6)
- ☐ ARTHRITIS TODAY (6)
- ☐ AUTOMOBILE (12)
- ☐ BETTER HOMES & GARDENS (12)
- ☐ BLACK ENTERPRISE (12)
- ☐ BOWHUNTING WORLD (9)
- ☐ BRIDAL GUIDE (6)
- ☐ CONDE NAST TRAVELER (12)
- ☐ COSMOPOLITAN (12)
- ☐ CRUISING WORLD (12)
- ☐ CYCLE WORLD (12)
- ☐ DETAILS (10)
- ☐ EATING WELL (6)
- ☐ EBONY (12)
- ☐ ELLE (12)
- ☐ ENTREPRENEUR (12)
- ☐ ESQUIRE (10)
- ☐ EVERYDAY WITH RACHAEL RAY (10)
- ☐ FAMILY CIRCLE (12)
- ☐ FAMILY FUN (10)
- ☐ FIELD & STREAM (12)
- ☐ FITNESS (10)
- ☐ FLORIDA SPORT FISHING (6)
- ☐ FLYING (12)
- ☐ GOLF DIGEST (12)
- ☐ GOOD HOUSEKEEPING (12)
- ☐ HARPERS BAZAAR (10)
- ☐ INSTRUCTOR (6)

- ☐ ISLANDS (8)
- ☐ LATINA (10)
- ☐ LUCKY (10)
- ☐ MARLIN (8)
- ☐ MEN'S JOURNAL (12)
- ☐ MORE (10)
- ☐ MOTOR TREND (12)
- ☐ OUTDOOR LIFE (12)
- ☐ PARENTS (12)
- ☐ POPULAR PHOTOGRAPHY (12)
- ☐ POPULAR SCIENCE (12)
- ☐ REDBOOK (11)
- ☐ ROAD & TRACK (10)
- ☐ ROLLING STONE (26)
- ☐ SALT WATER SPORTSMAN (10)
- ☐ SAVEUR (9)
- ☐ SEVENTEEN (10)
- ☐ SHAPE (12)
- ☐ SIEMPRE MUJER (6)
- ☐ TEEN VOGUE (10)
- ☐ TENNIS (6)
- ☐ TOWN AND COUNTRY (10)
- ☐ TRANSWORLD MOTOCROSS (12)
- ☐ US WEEKLY (52)
- ☐ VERANDA (6)
- ☐ WOMAN'S DAY (12)
- ☐ WORKING MOTHER (6)
- ☐ YACHTING (12)

OK TO COPY

Check your Extra FREE Magazine Subscription

- ☐ ARTHRITIS TODAY (6)
- ☐ AUTOMOBILE (12)
- ☐ BLACK ENTERPRISE (12)
- ☐ DIRT RIDER (12)
- ☐ EBONY (12)
- ☐ ENTREPRENEUR (12)
- ☐ FAMILY CIRCLE (12)
- ☐ FAMILY FUN (10)
- ☐ FAST COMPANY (10)
- ☐ GLAMOUR (12)
- ☐ GOLF WEEK (38)
- ☐ INC (12)
- ☐ LATINA (10)
- ☐ MEN'S FITNESS (10)
- ☐ MEN'S JOURNAL (12)
- ☐ MOTOR TREND (12)
- ☐ MOTORCYCLIST (12)
- ☐ NATURAL HEALTH (6)
- ☐ NYLON (10)
- ☐ NYLON GUYS (6)
- ☐ OK! MAGAZINE (52)
- ☐ SHAPE (12)
- ☐ TENNIS (6)
- ☐ UPTOWN MAGAZINE (6)
- ☐ WIRED (12)

\* No Renewal

"Tell your Friends and Families!"

\*\*\*\*DUE TO PUBLISHER PROCESSING TIMES, WE WILL NOT UNDER ANY CIRCUMSTANCES CHECK WITH ANY PUBLISHER ABOUT THE STATUS OF ANY MAGAZINE SUBSCRIPTION UNTIL AFTER 90 DAYS HAVE PASSED FROM THE DATE OF PROCESSING YOUR ORDER! NO EXCEPTIONS!\*\*\*\*



**Inmate Magazine Service**

P.O. Box 2063, Fort Walton Beach, FL 32549  
www.InmateMagazineService.com

Name and Inmate # (please print, maximum 24 characters):			
Address:			
City:		State:	Zip:

Allow 6-8 weeks for delivery. Pay by Check, Money Order or Order Online and use Credit Card or PayPal. Keep Address Short!



# Prison Systems Increasingly Provide Email – For a Price

by Derek Gilna

**P**RISON OFFICIALS AND CORRECTIONS experts have long recognized that helping prisoners maintain contact with the outside world decreases the stress, isolation and loneliness that are part of the inherent nature of incarceration. Further, regular communication with those outside of prison can help prisoners successfully reenter society following their release, resulting in lower recidivism rates. [See: *PLN*, April 2014, p.24].

In addition to the usual methods of communication such as phone calls, in-person visits and postal mail, a growing number of states have joined the federal Bureau of Prisons in providing email services for prisoners. [See: *PLN*, Dec. 2009, p.24].

For example, the Minnesota Department of Corrections established a modified email system in 2012 that allows prisoners to receive emails from approved outside parties. The emails are received on computers in prison mailrooms, printed and then delivered to prisoners with their regular mail. There is no direct access to the Internet.

Iowa-based Advanced Technologies Group (ATG) signed a contract with Minnesota to provide the prison-based email service after operating a six-month pilot program. The company also supplies secure email services to the Bureau of Prisons through the Corrlinks system.

Responding to those who question why prisoners deserve access to email, ATG CEO Atul Gupta said, “People think that you’re doing these things for inmates who really shouldn’t be getting anything. You’re giving them email ... [but] it’s not really email. It’s a communications system.”

“We’re getting them ready for society,” he added. “Otherwise, they’re going to come right back, and that’s not what we want.”

Gupta noted that the email service doesn’t cost the prison system or taxpayers anything, as either the prisoners or those who contact them via email pay for the service.

“Most states, what they will do is, they will look at it in terms of saying, ‘Hey, can we generate some revenue? Let’s do that,’” he said.

How is that revenue generated? The same way that corrections agencies make money from prison phone services – by

receiving a portion of the income from the company, in the form of a “commission” or kickback.

In Minnesota prisons, email messages cost \$.30, with \$.10 going to ATG and \$.20 going to the state. People can send messages to Minnesota prisoners through the email system but prisoners cannot respond via email, unlike in some other states.

In addition to Minnesota and the federal prison system, ATG provides email services for state prisoners in Iowa and Oklahoma, plus one immigration detention facility. The company’s largest competitor is JPay, which supplies a variety of services to prison systems, including money transfers, video visitation, MP3 downloads and email.

As of April 2014, JPay provided email services for state prisons in Colorado, Indiana, Kansas, Louisiana, Michigan, Georgia (women’s prisons only), Missouri (certain prisons only), Nevada, Ohio, Pennsylvania, Texas, Washington and Virginia (certain prisons only), plus several county jails and individual facilities.

In many of those states, prisoners can send as well as receive emails; family members access the email system online, while prisoners use special kiosks in their housing units. In some cases, photos or short video files can be attached to the messages – for an additional fee.

Prisoners and those who want to communicate with them via email buy “stamps” to send each message, which cost from \$.17 to \$.60 each depending on the prison system and the number of stamps purchased; the average price per email is \$.40 to \$.50.

As with ATG, JPay has a commission-based business model, in which it provides a portion of its revenue to the contracting agency. In Tennessee, for example, under a proposed fee schedule attached to a 2012 contract, JPay offered to provide prison email services for \$.40 per message with the state receiving 4% of the revenue.

Other companies that provide email services to prisons and jails include Smart Jail Mail (which charges \$.50 per message), ICSolutions, and prison phone service providers Securus and Global Tel\*Link.

The growing number of states that provide prisoners with access to email

is a reflection of today’s increasingly digitally-connected world, where electronic communication has become the norm. The main difference is that outside of prison, email is free. ■

Sources: [www.mprnews.org](http://www.mprnews.org), [www.jpay.com](http://www.jpay.com), [www.a-t-g.com](http://www.a-t-g.com), [www.smartjailmail.com](http://www.smartjailmail.com), [www.icsletters.com](http://www.icsletters.com)

**INMATE SHOPPER**  
Includes NFL FOOTBALL  
NFL TEAM Schedules & NFL WEEK Schedules

**NEW CONTENT**  
  
**NEW OWNER**

**AMERICA'S MOST TRUSTED  
LARGEST & UP TO DATE  
GUIDE FOR INMATE SERVICES**

Sports Schedules	Non Nude Girls
Business Directory	Pen Pal Resources
LBGT Section	Gift Shops
Contest for Writers & Artists	Catalogs to Order
Articles, Tips & Facts	Sexy Photo Sellers
Resources	Typist
New Content Every Issue	Personal Assistants
Something for Everyone	Magazine Sellers
	Publishing Services

**Only \$24.99 Incl. S&H w/tracking**

⇒ Send Me the **CURRENT ISSUE** Inmate Shopper:

⇒ Send Me the **NEXT ISSUE** Inmate Shopper:  
☐ March ☐ July ☐ Nov/Holiday

⇒ Send Me the **CENSORED ISSUE** Inmate Shopper  
Without Pen Pal Content & No Sexy Girls - No More Rejections

**No Order Form Needed:**  
CLEARLY WRITE ON PAPER & SEND WITH PAYMENT TO:  
**INMATE SHOPPER**  
Box 533, NORTH DIGHTON, MA 02764  
[WWW.INMATESHOPPER.COM](http://WWW.INMATESHOPPER.COM)

# Repackaging Mass Incarceration

by James Kilgore

SINCE MY *COUNTERPUNCH* ARTICLE IN November 2013, which assessed the state of the movement against mass incarceration, the rumblings of change in the criminal justice system have steadily grown louder. Attorney General Eric Holder has continued to stream his mild-mannered critique by raising the issue of felony disenfranchisement;\* the President has stepped forward with a proposal for clemency for people with drug offenses that could free hundreds. In the media, we've seen a scathing attack on America's addiction to punishment in *The New York Times* and the American Academy of Sciences has released perhaps the most comprehensive critique of mass incarceration to date, the 464-page *The Growth of Incarceration in the United States: Exploring Causes and Consequences*.

In late May 2014, several dozen conservatives including Newt Gingrich, Grover Norquist and former NRA president David Keene pulled together the first Right on Crime (ROC) Leadership Summit in Washington, D.C. The ROC, an organization which boasts a coterie of members with impeccable right-wing credentials, reiterated the need for conservatives to drive the process of prison reform. The conference's "call to action" argued: "In our earnest desire to have safer neighborhoods, policy responses to crime have too often neglected core conservative values – government accountability, personal responsibility, family preservation, victim restoration, fiscal discipline, limited government and free enterprise."

Gingrich engaged in similar kinds of soul searching: "Once you decide everybody in prison is also an American then you gotta really reach into your own heart and ask, is this the best we can do?"

All of this has precipitated another round of optimistic cries about the possibilities of a left-right coalition on mass incarceration, including a high-profile *Time Magazine* op-ed co-authored by Norquist and MoveOn.org co-founder Joan Blades.

While the spirit of reconciliation in criminal justice attracts most of the media attention, a number of pieces have also emerged rejecting any rush to positive judgment. For example, fellows at the Brennan Center compiled a statistically based report which contends that carceral change has not yet turned the corner, while *Black Agenda Report* co-founder Bruce Dixon asserted that Obama's clemency measures would have no significant impact on mass incarceration.

However, another process, likely at least as important in the long run as number crunching, coalitions or clemency, also has been gaining steam. The official voices of incarceration – politicians, corrections officials, private prison operators, prison guards unions and county sheriffs – are exploring changing discourse and cosmetic reform in order to avoid systemic restructuring. In the business world, they call this repackaging.

## Repackaging Mass Incarceration: Carceral Humanism

CURRENTLY THIS REPACKAGING ASSUMES several forms. One of the most important is carceral humanism or what some people refer to as incarceration lite. Carceral humanism recasts the jailers as caring social service providers. The cutting edge of carceral humanism is the field of mental health. According to a recent report by the Treatment Advocacy Center, in 2012 the U.S. had over 350,000 people with serious mental health issues in prisons and jails as compared to just 35,000 in the remaining state mental health facilities. Prisons and jails have become the new asylums and jailers are waking up to the fact that mental health facilities also represent a new cash cow.

Likely the most important examples of

carceral humanism are happening in California. There, Governor Jerry Brown has played a shell game called realignment in which he's transferred thousands of people from state facilities to county jails in order to comply with a federal court order to reduce the state prison population. To help counties adapt to all these new prisoners, the governor gave \$500 million to the state's sheriffs to build extensions onto their jails. In response, the sheriffs had to come to Sacramento to pitch for a slice of that money. They didn't come talking about public safety. Their mantra focused on caring-providing opportunities and improved circumstances for those in custody. The Department of Corrections and Rehabilitation's summary from Lake County, one of the 15 winners out of 36 submissions, is illustrative: "\$20 million for a new Type II, 40-bed women's jail with a new stand alone 39-bed Medical/Mental Health Services building with program space, a new administration building, and renovations so that existing space can accommodate programs."

The new jails are about institutionalizing the funding of mental health and other services behind the walls, further diverting money from the already bare-bones social services in communities. The Lake County proposal also featured another prominent strain of carceral humanism – a women's jail, or in the present corrections jargon, a "gender-responsive" facility. Since mainstream research now argues that women experience incarceration differently than men, law enforcement is waving the gender banner to access more funding for construction. Los Angeles lies at the cutting edge in this regard. In March 2014, the LA Board of Supervisors authorized \$5.5 million for consultants to draw up a plan for what some law enforcement people are calling a "women's village." Deputy Sheriff Terri McDonald of Los Angeles suggested that the new facility could be a place where "women and children could serve their time together."

Carceral humanism has also surfaced in the repackaging of immigration detention centers. The latest immigration prisons carry the label "civil detention" centers. The GEO Group, the nation's second-largest private prison operator, opened its lat-

## Pen Pals for Prisoners

Your ad on the Internet worldwide:

One year for \$9.95. Mail name &

address for FREE order form or online:

[www.PrisonerPal.com](http://www.PrisonerPal.com)

PO Box 19689

Houston, TX 77224

est such facility in Karnes, Texas. The *LA Times* called it a “pleasant surprise for illegal immigrants.” Immigration and Customs Enforcement (ICE) officials boast that people detained in Karnes won’t be housed in cells but in “suites” holding eight people. Those detained will be supervised not by guards or correctional officers but by “resident advisers.”

## Repackaging 2: Non-Alternative Alternatives to Incarceration

A SECOND FORM OF REPACKAGING MASS incarceration falls under the heading of non-alternative alternatives to incarceration. These non-alternatives purport to change things but in essence simply perpetuate the culture of punishment. The most common forms of these are drug courts, mental health courts and day reporting centers. While many of these may be well-intentioned and in some cases have positive effects, they typically involve heavy monitoring of a person’s behavior, including frequent drug testing, limitations on movement and association, a whole range of involuntary but supposedly therapeutic programs of dubious value and very little

margin of error to avoid reincarceration. Perhaps the most extreme example of a non-alternative alternative to incarceration, and one which is likely to gain increasing traction, is electronic monitoring.

While advocates claim electronic monitoring facilitates employment, building family ties and participation in community activities, my interviews with a number of people on a monitor have revealed a different experience. Jean-Pierre Shackelford, who spent two years on an ankle bracelet in Columbus, Ohio said that he felt like his probation officer had him in a “choke hold” while he was on an ankle bracelet. He labeled monitoring “another form of control and slavery, 21<sup>st</sup> century electronic style.” Shaun Harris, on a monitor for a year in Michigan, called it a form of privatized incarceration; “it’s like you just turned my family’s house into another cell” was his comment.

Shackelford and Harris, like many others I spoke with, both reported difficulty getting movement for family activities and a lack of clarity about what was and wasn’t permitted. Shackelford finally took to going to church because that seemed to be the

only activity his probation officer would approve. Both Shackelford and Harris, like most people interviewed, complained that they could be put on 24-hour “lockdown” (meaning they couldn’t leave the house at all) for any reason for an indefinite period and there would be no way to appeal such a decision. Even a late return home from work due to a delay in public transportation could result in a re-arrest. To make matters worse, most electronic monitors come with a daily user fee which ranges anywhere from five to twenty dollars a day.

While the punitive nature of ankle bracelet regimes is a cause for concern, the potential to implement exclusion zones with GPS-based monitors contains more serious long-term implications. Exclusion zones are places where monitors are programmed not to let people go. At the moment, authorities mainly use exclusion zones to keep individuals with a sex offense history away from schools and parks. But such zones have the potential to become new ways to reconstruct the space of our cities, to keep the good people in and the bad people out. This technology, which can be set up via smart phones, holds the

## AHRONY, GRAHAM, & ZUCKER, LLP A POST-CONVICTION LAW FIRM

**Appeals**

**Habeas Corpus  
Writs (Factual  
Innocence)**

**Parole Hearings**

**SB 260 Hearings**

**MDO Hearings**

**Re-Sentencing**



**Bruce Zucker**

**Orly Ahrony**

**Ian Graham**

**Probation Violations**

**Rap Sheet Correction**

**Prison &  
Parole Issues**

**115 Discipline Issues**

**California & Federal  
Courts**

12400 WILSHIRE BLVD. SUITE 400 • LOS ANGELES, CA 90025

TEL. (310) 979-6400 • WWW.AHRONYGRAHAM.COM

California Cases Only • Unsolicited Original Documents Will Not Be Returned

This is an Advertisement for Legal Services



## Mass Incarceration (cont.)

possibility to turn houses, buildings, even neighborhoods into self-financing sites of incarceration.

In the meantime, firms like the GEO Group, which owns BI Incorporated, the nation's largest provider of electronic monitoring technology and backup services, are experimenting with new target groups for ankle bracelets. In parts of California and Texas they've used electronic monitors on kids with school truancy records. Under a \$370 million contract, BI already has thousands of people awaiting immigration adjudication on monitors. Packaged as an alternative, these bracelets actually represent a new horizon for incarceration, finding ways to do it cheaper with technology through the private sector and then getting the user to pay, likely a model that would line up squarely with Right on Crime's notions of reform.

### Repackaging: Why Now?

MOST COMMENTATORS ATTRIBUTE THE spirit of change in criminal justice to a

belated recognition of the fundamental irrationality of spending so much money locking up so many people for so long. As Grover Norquist put it, "Conservatives may have wanted more incarceration than was necessary in the past, so what we're trying to do is find out about what works."

Such analyses make perfect sense but they also ignore a big picture political question. Mass incarceration is becoming a flash point of rebellion and resistance, with African American communities the most visible hot spot. Mass incarceration and the racialized vagaries of criminal justice have been going on for decades but recently we've seen new levels of anger and frustration in reaction to the deaths of Trayvon Martin and Oscar Grant, as well as to the sentencing of Marissa Alexander. Even mainstream Black commentators like Melissa Harris-Perry appear incensed. At the grassroots level we've witnessed campaigns against stop-and-frisk, solitary confinement, mandatory minimums, crack cocaine laws and a host of new jails and prisons.

On the ideological plane, the notion of the New Jim Crow, categorizing mass incarceration as a new form of slavery and segregation, is catching on. People are latching onto the idea of mass incarceration as a systemic problem that can only be solved with a vast redirecting of resources into the communities that have been devastated by imprisonment. In other words, mass incarceration requires a total paradigm shift. The situation has the potential to explode. Politicians and business people don't like explosions. When explosions appear to be a genuine possibility it is time to talk reform, time to repackaging.

To make matters worse for purveyors of the carceral status quo, the immigrants' rights movement has also been erupting over the last decade. From the immigrant worker strikes and demonstrations of 2006 to the endless string of demonstrations by the Dreamers and the Dream Defenders in the face of continued mass deportations, a steady stream of unrest has materialized. With the changing national demographics, key players in criminal justice need to be seen to be doing something if they want to maintain their power.

Lastly, there is the movement inside the prisons themselves. The hunger strikes at Pelican Bay in California and in Washing-

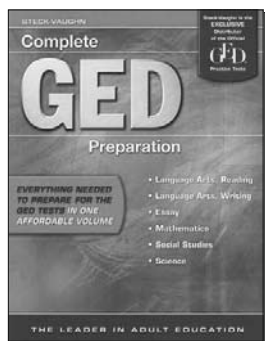
ton's Northwest Detention Center, coupled with the outpouring of solidarity these actions prompted, pose a serious threat to the already heavily-smeared image of U.S. prisons. In addition, even once-notorious political prisoners are gaining increasing legitimacy. Captives from across several generations are attracting large coterie of supporters. This includes high-profile individuals who have served decades behind bars, individuals like Mumia Abu-Jamal, Albert Woodfox, Oscar Lopez Rivera, Russell Maroon Shoatz and Leonard Peltier, along with more contemporary prisoners like Lynne Stewart (recently released), Marie Mason and Chelsea Manning. Inside and beyond the walls, there is rebellion in the air.

This reality raises another question: whether a left-right coalition can deliver even enough change to calm the waters. Mass incarceration has become such a fundamental part of how the U.S. addresses issues of race, crime, poverty, gender and inequality, it appears unlikely to collapse from gradual reforms whether inspired by carceral humanism, punitive alternatives to incarceration or more genuine critique. As with civil rights, pressure from below will be required from a social movement that has the creativity to envision an alternative, the skills and legitimacy to mobilize the people who are most directly affected, and the political power to make their voices be heard and get others to join them. Perhaps this social movement is, to borrow a phrase from the Spanish poet Antonio Machado, making the path by walking at this very moment. ■

*\* Ed. Note: Attorney General Holder announced his resignation on Sept. 25, 2014.*

*James Kilgore was a Research Scholar at the Center for African Studies at the University of Illinois (Urbana-Champaign). He is a frequent commentator on mass incarceration, a social justice activist and the author of three novels, all of which were written during his six-and-a-half years of incarceration. He is currently working on a primer on mass incarceration to be published by The New Press in 2015. His writings are available on his website, [www.freedomneverrests.com](http://www.freedomneverrests.com).*

*This article was originally published in the June 6-8, 2014 edition of CounterPunch ([www.counterpunch.org](http://www.counterpunch.org)); it is reprinted with permission of the author, with minor edits.*



### Complete GED Preparation [Paperback]

Publisher: Steck-Vaughn; 2nd edition  
928 pages; \$24.99; Item #: 1099

Over 2,000 GED-style questions thoroughly prepare learners for test day. This single book offers thorough coverage of the revised GED Test with new test information, instruction, practice, and practice tests. Answer key included.

Order from: **Prison Legal News**  
(Add \$6 shipping for orders under \$50)  
**PO Box 1151**  
**Lake Worth, FL 33460**  
**Phone: (561) 360-2523**  
**[www.prisonlegalnews.org](http://www.prisonlegalnews.org)**



# PLN FUNDRAISER 2014



*Please Support Prison Legal News  
and the  
Human Rights Defense Center!*



Prison Legal News, a project of the non-profit Human Rights Defense Center, cannot fund its operations through subscriptions and book sales alone. We rely on donations from our readers and supporters – like you!

PLN conducts just one fundraiser a year; we don't bombard our readers with donation requests, we only ask that if you are able to contribute something to our important work, please do so. Every dollar counts and is greatly appreciated and will be put to good use. No donation is too small, even books of stamps!

## **Where does your donation go? Here's some of what we've done in the past year:**

- HRDC, a co-founder and leader of the Campaign for Prison Phone Justice, was instrumental in getting the Federal Communications Commission to reduce the cost of prison phone calls, which the FCC did when caps on interstate prison phone rates went into effect in February 2014!
- PLN settled censorship suits against jails in Ventura County, California; Upshur and Comal County, Texas; and Kenosha County, Wisconsin. In all of those cases, the jails agreed to change their mail policies to allow prisoners to receive PLN and other correspondence.
- PLN has other censorship lawsuits pending against the Nevada DOC, the Florida DOC and jails in Texas, Tennessee, Virginia, Arizona, Michigan, Georgia and Florida.
- PLN settled a wrongful death suit brought by the family of a Washington state prisoner who died due to inadequate medical care, and settled a lawsuit filed on behalf of a former prisoner who lost her baby after guards at a CCA-run jail in Tennessee delayed sending her to a hospital.

## **With your help we can do more! Please send your donation to:**

**Prison Legal News, P.O. Box 1151, Lake Worth, FL 33460**

Or call PLN's office at 561-360-2523 and use your credit card to donate.

Or visit PLN's website at [www.prisonlegalnews.org](http://www.prisonlegalnews.org) and click on the "Donate" link.

## **PLN Support Gifts**

### **Gift option 1**

As a token of our gratitude for your support, we are providing the PLN card when making a donation of \$50. The card is hand embroidered by women prisoners in Bolivia who are paid a fair wage for the cards to help support their families.



### **Gift option 2**

In recognition of your support, we are providing the PLN hemp tote bag when making a donation of at least \$75. Handmade in Vermont using hemp fiber. Carry books and groceries stylishly and help end the war on drugs!



### **Gift option 3**

To show our appreciation for your support, we are providing the following selection of books for you to choose from when making a donation of \$100. Donations of \$100 or more can choose one free title. Each \$100 donation entitles you to another free title; i.e., donate \$500 and you get five books! \$1,000 and you get everything on the page! Please circle the books you want and send the corresponding donation amount.



### **Gift option 4**

As a thank you gift for your support, we are providing the entire PLN anthology of critically acclaimed books on mass imprisonment signed by editor Paul Wright! (The Celling of America, Prison Nation and Prison Profiteers) plus the PLN hemp tote bag to carry the books in when making a donation of \$250 or more.



# Florida: Sheriff's Office and Medical Provider Pay \$1 Million for Prisoner's Death

by Gary Hunter

**I**N JULY 2013, ARMOR CORRECTIONAL Health Services agreed to settle a wrongful death suit by paying \$800,000 to the family of Allen Daniel Hicks, Sr., who died after being denied medical care while incarcerated at a jail in Hillsborough County, Florida. The county paid another \$200,000 to Hicks' family.

On the morning of May 11, 2012, Hicks was observed swerving down Interstate 275. Highway Patrolman Justin Lunsford and Sheriff's Deputy Richard Guzman found Hicks' car parked against a guardrail. They were joined at the scene by fire rescue personnel.

Hicks responded incoherently when asked for his driver's license. Once it became apparent he was too confused to find it, Guzman reached in and retrieved it from the car's console. When Hicks' left hand dropped to his side, the officers ordered him to show them his hands; when he did not immediately comply, they drew their service weapons. In his confused state, Hicks' only reaction was to respond, "That's a 9 millimeter semiautomatic gun that you have." After determining he was not armed, Hicks was dragged from his car.

He did not smell of alcohol. And even though he was unable to move his left arm, the paramedics who examined him at the scene "found no medical problems." But due to his erratic behavior they recommended that he be transported to a hospital for a psychological examination. The officers ignored the advice.

Instead, Hicks was taken to the Orient County Jail, where he did not receive an initial medical examination despite the fact that three nurses, employed by Armor, observed him when he was admitted. He was booked into the jail at 12:23 p.m.

Surveillance video showed that while being booked, Hicks' left side was completely immobilized – a classic symptom of a stroke. His mobility was so impaired that his left foot dragged on the floor beside his wheelchair and he was unable to sign his name. Instead of receiving an examination, Hicks was thrown into a jail cell where he lay facedown for hours. One of the nurses was overheard saying he was faking an illness.

Before his first medical examination at 3:35 p.m., video showed Hicks lying mostly motionless in his cell. Occasionally his right side would twitch or he would attempt to crawl using only his right side. At around 5:50 p.m., Hicks was transferred to the Falkenburg Road Jail.

It was not until 12:10 p.m. on May 12, more than a day after he was booked, that Hicks was given a psychiatric exam by a social worker. "The employee noted that [Hicks] could not engage, smelled of urine, and complained of incontinence, and indicated that he could not use his legs or walk ... he had decreased psychomotor activity [and was] delusional with a poor memory."

At about 10:30 p.m. an examining nurse finally concluded that Hicks may be suffering from a stroke. Over 36 hours from the time he was arrested, he was finally taken to a hospital. Physicians determined that Hicks had "...suffered a subacute ischemic stroke, which he had been suffering from for a considerable length of time ... he had suffered severe brain damage and it was too late to administer the appropriate treatment." He died three months later.

A statement issued by the Hillsborough County Sheriff's Office (HCSO) admitted "that mistakes were made" by jail staff and Armor employees. Although the Sheriff's Office "took immediate responsibility for its actions," Armor was not as forthcoming.

The company declined to comment regarding its role in Hicks' death. However, it defended its record in a written statement, saying, "Armor strives to deliver excellent patient care each and every day, no different than the finest teaching hospitals in our country.... And, like those outstanding hospitals, occasionally even great care results in an unintended outcome."

Yet the jail's surveillance video indicated that the level of care Hicks had received from Armor employees at the jail was woefully substandard. Thea Clark, an attorney for the Sheriff's Office, concluded, "There is no doubt in my mind that if plaintiff's claims were presented to a jury, plaintiff would receive a judgment against HCSO in amounts that far exceed \$200,000."

As a result, the county – as well as

Armor – decided to settle a wrongful death suit filed by Hicks' estate. See: *Stalley v. FL Dept. of Highway Safety and Motor Vehicles*, U.S.D.C. (M.D. Fla.), Case No. 8:13-cv-01892-VMC-TBM.

Shortly after Hicks' death, Col. James Previtera of the Hillsborough County Sheriff's Office revoked the security clearance of both Lewis Hays, the top-ranking Armor administrator at the jail, and his assistant for "improperly handling" Hicks' medical records. Previtera said the two employees had made "conflicting statements about the existence of records."

Armor transferred Hays to the Pinellas County Jail to serve as the company's administrator at that facility, but Sheriff Bob Gualtieri removed him and later canceled the county's contract with the company in May 2014, citing "operational concerns." Previously, Pinellas County had fined Armor over \$150,000 for contractual violations.

"It just wasn't working," Sheriff Gualtieri stated. "I don't think we can work out some of those differences." He added: "The prudent thing to do is bring [medical care] back in-house."

Armor has been criticized for providing inadequate medical care on numerous occasions; thus, it was not surprising that effective October 1, 2014, Hillsborough County terminated its contract with the company, too. The county awarded a new \$20 million contract to NaphCare, another for-profit prison and jail medical provider.

"It was time to test the market and see what was out there," said Hillsborough Sheriff's Col. Kenneth Davis, who oversees jail operations. "NaphCare just had a better model ... for the delivery of health care. They are quick to identify and treat the needs of inmates."

NaphCare provides medical services to several federal prisons in Florida, as well as a number of jails and state prisons across the country. The company, like Armor and most other for-profit correctional medical providers, also has a record of failing to provide adequate healthcare for prisoners. ■

Additional sources: [www.tampabay.com](http://www.tampabay.com), [www.wfla.com](http://www.wfla.com)

HERE'S AN OPPORTUNITY TO TRY

# 12 Fun-Packed Issues of **RE MIND** magazine



ReMIND magazine offers fresh takes on popular TV, movie, music and sports personalities from days gone by. Rounding out each jam-packed issue of ReMIND are dozens of brain-teasing puzzles, trivia quizzes, classic comics and features, providing a fun way to stay sharp while interactively sharing the past with the next generation!

**FREE PREVIEW** online at:  
[www.remindmagazine.com](http://www.remindmagazine.com)

Enjoy monthly THEMES & CONTENT like:

- Sudoku ▪ Movie Stars ▪ Word Sleuth ▪
- Trivia ▪ Retro Ads ▪ Articles ▪

## ORDERING IS EASY!

Online: [www.remindmagazine.com](http://www.remindmagazine.com)

Phone: 1-877-871-4179

Mail: Complete order form below.

☒ **YES!** Sign me up for 1 year (12 issues) of ReMIND magazine for only \$17.99. THAT'S OVER A 60% SAVINGS!

**YOUR SAVINGS**

**\$41.89**

**YOUR PRICE**

**\$17.99**

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

Mail this coupon to: ReMIND magazine, 213 Park Drive, Troy MI 48083

**Option #1/** Pay by check or money order  
 (Make check or money order out to: ReMIND magazine)

**Option #2 /** Charge my credit card \_\_\_\_\_  
 Credit Card # \_\_\_\_\_

☐ Visa ☐ MC ☐ Discover ☐ AmEx Exp. Date: \_\_\_\_\_

Signature Required: \_\_\_\_\_

Allow 4-6 weeks for delivery of your first issue.

Prison Legal News



# Habeas Hints: Supreme Court Habeas Review 2014

by Kent Russell

*This column provides “habeas hints” to prisoners who are considering or handling habeas corpus petitions as their own attorneys (“in pro per”). The focus of the column is on the Antiterrorism and Effective Death Penalty Act (AEDPA), the federal habeas corpus law which now governs habeas corpus practice in courts throughout the United States.*

## How Far Right Has the Supreme Court Drifted on Habeas Corpus?

AS THE 2014 TERM PROCEEDS IN THE U.S. Supreme Court (SCOTUS), the Court’s docket contains very few habeas corpus cases – a situation similar to the 2013 term. This relatively quiet interlude comes in the wake of recent terms yielding blockbuster decisions which are major roadblocks to relief on federal habeas corpus – as described in my previous Habeas Hints columns, “Staring Down the Two-Headed Monster: Richter and Pinholster.” [See: *PLN*, Dec. 2013, p.28; Nov. 2013, p.12].

This provides an opportunity to step back and assess the degree to which the Court may have drifted so far to the “right” – that is, to the ultra-conservative “right-wing” extreme – that habeas corpus no longer serves a valuable function in holding the state criminal justice systems accountable by providing a federal check on unconstitutional convictions. Indeed, this is essentially the position that Michael Dorf, a law professor at Cornell, laid out in *Verdict*, an online publication, in a May 22, 2013 article titled “A Unanimous Supreme Court Ruling Underscores the Limits of Habeas Corpus as a Remedy for State Prisoners.”

Professor Dorf based this conclusion on *Metrish v. Lancaster*, 133 S.Ct. 1781 (2013), in which the Court unanimously held that a federal habeas corpus petitioner could not argue “diminished capacity” at his retrial even though Michigan law at the time he committed the crime specifically allowed for such a defense. In this column I’ll review Professor Dorf’s argument and explain why I disagree with it.

In *Metrish*, Burt Lancaster (not the famous actor but a former police officer with a long history of severe mental health problems) shot and killed his girlfriend in 1993. Lancaster was tried by jury in a Michigan court, where he admitted the killing but

argued “diminished capacity” – a defense whereby a defendant who has been found to be legally sane nevertheless presents evidence of mental illness in an effort to negate the specific intent required for murder.

The jury didn’t buy the defense and convicted him of first-degree murder. Lancaster, however, filed a habeas corpus petition and managed to get his conviction reversed because the prosecutor had improperly excluded a potential juror on the basis of race.

Lancaster was retried but it was now 2005, and by that time the Michigan Supreme Court had rejected diminished capacity as a defense and the Michigan legislature had explicitly abolished diminished capacity, replacing it with a system in which the defendant could argue either that he was legally insane or “guilty but mentally ill,” but could no longer present evidence of mental illness in an effort to reduce the crime of murder to some lesser offense.

Lancaster was re-tried, and after electing a trial by judge rather than by jury, argued that the change in the law eliminating diminished capacity could not apply to him, because the Constitution prohibited the state from retroactively “punishing” a defendant by depriving him of a defense that had been in existence when the alleged crime occurred. However, the judge rejected that argument and prohibited Lancaster from using diminished capacity as a defense, whereupon he was again convicted of first-degree murder and sentenced to life in prison.

Lancaster then continued to assert his due process claim on appeal and habeas corpus. He was unsuccessful in the Michigan courts and in the U.S. District Court, but the Sixth Circuit Court of Appeals reversed, concluding that clearly established SCOTUS case law prohibited the state courts from retroactively depriving Lancaster of a diminished capacity defense. SCOTUS then granted certiorari, and a unanimous Court rejected Lancaster’s habeas claim and reinstated his conviction and sentence.

To anchor his argument that *Metrish* marks an extreme rightward tilt by SCOTUS, Professor Dorf adopts the premise that the justices unanimously rejected Lancaster’s habeas claim despite concluding that his trial “may very well have violated

his due process rights.” In my judgment that’s just not so. Rather, the SCOTUS opinion carefully examined the prior cases relied upon by Lancaster, found them to be inapplicable and concluded: “The Court has never found a due process violation in circumstances remotely resembling Lancaster’s case.” That is far from a casual acknowledgment that Lancaster’s due process rights may have been violated; instead, it’s a clear and firm determination that his constitutional rights were *not* infringed.

Next, Professor Dorf argues that, because the Supreme Court – having previously held that a habeas petitioner cannot benefit from new rules announced since his conviction became final, yet refusing to allow Lancaster to assert a defense that was on the books when he was tried – has become a forum in which “The only operative rule is *Heads I win, tails you lose*.”

I don’t agree, at least not on the basis of *Metrish*. First, prohibiting Lancaster from arguing diminished capacity a second time doesn’t seem all that unfair, because Lancaster did have the opportunity to argue diminished capacity at his first trial and the jury rejected that defense. More importantly, the law that Lancaster was prohibited from using at his second trial was not only old but *disfavored* and *disapproved* – both in Michigan and in almost all other jurisdictions as well. Accordingly, nothing that the Court said in *Metrish* would prohibit some other petitioner from using old law to his benefit upon a retrial if the old law hadn’t been so discredited as to become legally obsolete.

Professor Dorf also relies on a brief historical analysis showing that SCOTUS has moved far to the right since the Warren Court era. That’s certainly true – a no-brainer, really – but I would argue that the major rightward tilt by SCOTUS had already reached its limit *before* its decision in *Metrish*. It’s no secret to anyone familiar with habeas history that, since the Warren Court’s heyday in the 1960s, SCOTUS has cut far back on the power of the federal courts to interfere with convictions and sentences handed down by the state courts.

Whereas a single federal judge used to have the power to set aside a criminal conviction simply because he or she disagreed



with the state court's application of the underlying constitutional law, those days ended with the 1996 enactment of AEDPA – the law which prohibits a federal court from interfering with a state court's verdict or sentence unless the state court's decision was not only wrong, but “unreasonable.” Although SCOTUS backed away from eliminating habeas corpus altogether in the Guantanamo Bay cases, the Court has continued to weaken federal habeas corpus by requiring an almost slavish acceptance of state court denials, especially when it comes to IAC (ineffective assistance of counsel) claims – traditionally the backbone of habeas corpus litigation because it allows the petitioner to bring in new evidence not available at the time of trial.

Thus, well before SCOTUS decided *Metrish* in May 2013, there was already a consensus among the justices as to three core principles (let's call them the “Tough Three”) which, taken together, severely limit the role of federal habeas corpus as a bulwark against wrongful state convictions: 1) On federal habeas corpus, a prisoner bears the burden of disproving state factual findings by clear and convincing evidence and, as to the state court's legal reasoning, showing constitutional error “so lacking in justification that it is beyond any possibility for fairminded disagreement.” 2) The prisoner must carry this heavy burden solely on the basis of the state court record and without resort to a federal evidentiary hearing. 3) When a federal habeas petitioner's claim is based on IAC, the district court must accord “double deference” to the state court's

denial of relief, such that the petitioner can only prevail if s/he can demonstrate that every conceivable basis for the state court's denial – whether actually mentioned by the state court or not – is unreasonable.

Compared with the Tough Three, which had already impacted the vast majority of the thousands of federal habeas corpus petitions filed annually, *Metrish* involved a unique situation involving all of the following anomalies: a defense that was on the books when the defendant was tried but which was abolished just a few years later; a defendant who was allowed to use the since-abolished defense at the first trial and did so, but who lost because the jury rejected it; a habeas petitioner who managed to win a retrial on federal habeas corpus but on an issue having nothing whatsoever to do with the disapproved defense; and a retrial which occurred after the former defense was not only abolished by the state's highest court but also was explicitly removed by the state legislature as part of a comprehensive overhaul of the state's criminal code.

Thus, *Metrish* was a perfect storm of highly unusual occurrences that almost certainly will never happen again in any other case coming before the Supreme Court. Accordingly, that this bizarre case was decided unanimously does not represent to me a consensus on anything other than that it wasn't worth it to labor over a dissenting or concurring opinion in a case of such insignificance to habeas corpus litigation as a whole.

In the concluding part of his article, Professor Dorf offers three specific reasons

why he believes the ground has shifted to the right in the Supreme Court. But none supports his thesis that SCOTUS has drifted so far right that federal habeas corpus no longer serves as a check on wrongful state convictions.

First, he argues that no politicians – Democrats or Republicans – have any “political angle” in supporting the constitutional rights of criminal defendants. That may have been true when AEDPA was enacted in 1996, but since then there have been hundreds of cases of people who were duly convicted in state courts but who have since been proved to be completely innocent, many after serving lengthy prison terms.

The public is well aware of these exonerations through news reports, documentaries and even plays and movies, and I would argue that, as a result, many if not most voters would enthusiastically support a politician who opposes a legal system in which federal habeas corpus – the last bastion of the wrongfully convicted – is eliminated as a remedy.

Second, Dorf laments that even Justice Ginsburg – the Court's most liberal voice – quietly accepted Lancaster's “unconstitutional conviction.” Yet, as I've shown above, there was nothing unfair or unconstitutional about Lancaster's failure to get a second bite at a rotten apple, and Justice Ginsburg continues to dissent in habeas cases which, unlike *Metrish*, affect numerous defendants. (See, e.g., *White v. Woodall*, 134 S.Ct. 1697 (2014) (Ginsburg, j., dissenting with Breyer and Sotomayor in a habeas case involving penalty-phase jury instructions)).

## Support Prison Legal News with these beautiful gifts!

CALL **561-360-2523**, MAIL ORDER OR USE WEB FORM  
[HTTP://WWW.PRISONLEGALNEWS.ORG/](http://www.prisonlegalnews.org/)



## Hand Embroidered Greeting Cards



Made by women prisoners in Cochabamba, Bolivia. Each card is individually made, no two are identical. The prisoners are paid a fair wage for each card and keep 100% of the pay to support themselves and their families. Local fair trade non-profits in Bolivia supply the materials for the cards. **\$6.**

**Hand Made Hemp Tote Bag** All natural hemp tote bag hand made in Vermont with the Prison Legal News logo on both sides, in red and black. Great for carrying books, groceries, and more! Stamped on the inside that no sweatshop, prison or child labor was used in its manufacture. **\$12.**

\$6 shipping and handling for orders under \$50.

Third, Dorf “speculates” that the justices, having stood fast against the Bush administration’s pressure to abandon habeas corpus altogether in the Guantanamo cases, have incurred a species of battle fatigue whereby they “have less energy or inclination to fight for habeas corpus as a mechanism for collateral review of state convictions.” But if that’s true, then the liberal justices would have stopped dissenting across the board in criminal and habeas cases, and that simply hasn’t happened. Moreover, it’s even possible that Justice Roberts is beginning to emerge as an advocate for civil liberties and constitutional rights. (See, e.g., Roberts’ majority opinion invalidating a police seizure of a defendant’s cell phone in *Riley v. California*, 134 S.Ct. 2473 (2014), and his strong dissent from a ruling in which the majority upheld a criminal forfeiture case which resulted in the defendant being denied the right to counsel to contest the forfeiture, in *Kaley v. United States*, 134 S.Ct. 1090 (2014)).

In sum, the Court has surely moved to the right in the past few decades, but most of that happened well before the decision in *Metrish v. Lancaster*. And, contrary to Professor Dorf, I believe that SCOTUS is more likely now to continue to defend habeas corpus in the most important cases than to go off the right-wing cliff and abandon the Great Writ altogether as a check on unconstitutional state convictions. ■

*Kent A. Russell specializes in habeas corpus and is the author of the California Habeas Handbook, which thoroughly explains state and federal habeas corpus under AEDPA. The 5<sup>th</sup> Edition, revised every year or so, can be purchased for \$49.99, which includes priority mail postage. An optional order form can be obtained from Kent’s website (www.russellhabeas.com), or simply send a check or money order to: Kent Russell, “Cal. Habeas Handbook,” 3169 Washington Street, San Francisco, CA 94115.*

**Roget’s Thesaurus**

Can’t think of the right word?  
Let Roget’s help you! Over 11,000  
words listed alphabetically.  
See page 61 for more information.

## Inspection Finds Improvements at CCA-Owned Ohio Facility Following Rocky Start

**A** SEPTEMBER 2013 RE-INSPECTION report cited improvements in conditions at a privately-owned prison near Cleveland, Ohio compared to an inspection performed a year earlier, when state auditors identified numerous areas of non-compliance with state standards and conditions so bad that prisoners were living in mold-infested housing units without running water or working toilets.

Inspectors with the Correctional Institution Inspection Committee (CIIC), Ohio’s independent prison watchdog agency, said not all of the problems previously identified had been fixed at the 1,800-bed Lake Erie Correctional Institution (LECI), operated by Corrections Corporation of America (CCA) – but their September 2013 report indicated the prison was “heading in a positive direction.”

CCA had purchased LECI from the state in 2011 for \$72.7 million, and Ohio pays the company an annual fee and per diem rate to house prisoners at the facility under a 20-year contract with a guaranteed 90% occupancy. [See: *PLN*, Nov. 2012, p.16].

“The CIIC inspection team’s overall sense is that conditions have improved,” the report stated. “CCA has poured significant resources into the prison, including removing or changing staff, hiring on former (Ohio Department of Rehabilitation and Correction) staff, investing in additional security measures, and bringing in outside consultants.”

Despite those remedial actions, the CIIC team found that some areas showed little or no improvement over conditions cited during a January 2013 inspection. Specifically, “primary concerns” at the prison included “safety, security, and inmate discipline.”

For example, CIIC auditors found that incidents of prisoner-on-prisoner and prisoner-on-staff violence continued at a pace to match 2012’s record increase in the number of assaults at LECI. Following the January report, which noted a 180% increase in prisoner-on-prisoner violence and 300% increase in prisoner-on-staff assaults, CCA replaced the warden at the facility.

The re-inspection, conducted on Sep-

tember 9 and 10, 2013, was published the following month. Unlike the January 2013 audit when CIIC conducted a surprise inspection, the prison had advance notice of the September review.

The latest inspection report also found some areas in which conditions at the prison had worsened, including a “significantly higher percentage” of prisoners who tested positive for illegal substances during the first eight months of 2013 compared to the same period a year earlier.

“Heroin was like it was legal in there,” said a former LECI prisoner who was released in September 2013. “I wouldn’t have had to get out of bed to get heroin. I could have had it delivered to my bunk, there was so much.”

Inspectors also voiced concern over disciplinary actions and use of force by CCA staff, as well as levels of serious misconduct greater than those at similar minimum- and medium-security Ohio state prisons. The number of grievances filed by prisoners remained higher than during the years before CCA assumed control of LECI, although the number was down slightly compared to the January 2013 report, which had also cited “a high presence of gang activity and illegal substance use” and “frequent extortion and theft.”

The inspectors reported they had received various complaints from prisoners about medical and recreational services at the facility, though the audit did not specifically address those areas. They also noted that most of the CCA guards who were interviewed reported low or very low morale due to low wages.

Violations discovered in an earlier September 2012 audit of LECI included non-compliance with health, safety and administrative standards – ranging from poor food quality and sanitation to inadequate medical staffing, neglect of segregated prisoners, emergency unpreparedness and unsafe storage of hazardous materials.

Critics said the results of that audit indicted that CCA was “woefully unfit for the job” when it bought LECI from the state and began operating the facility on January 1, 2012. The company had touted the purchase as a model for other states wanting to reduce their corrections budgets and

raise cash through the sale of prisons, but problems arose almost immediately.

The ACLU of Ohio reported that the September 2012 audit found “outrageous violations” at the CCA facility. In a blog post, Ohio ACLU senior policy director Mike Brickner described incidents such as “prisoners being forced to use plastic bags for defecation and cups for urination because they had no running water for toilets. Basic conditions were heinous, with black mold, standing water, and spoiled food found throughout the prison.”

Within two months CCA had corrected many of those deficiencies, such as cleaning the black mold and replacing broken water fixtures, Brickner wrote, but he noted that “major problems like severe overcrowding, expanded use of solitary confinement, and inadequate medical care were simply left as ‘pending’ – a polite governmental term for ‘not done.’”

Another issue was the smuggling of contraband into the prison, especially drugs, alcohol and cell phones. The problem grew so serious, the ACLU said, that police started night patrols at the facility to catch people throwing contraband over the perimeter fence.

Local police assumed jurisdiction over LECI from the state highway patrol following the CCA takeover because Ohio law prohibits the highway patrol from policing privately-owned facilities.

Among the more egregious violations cited in the September 2012 inspection report were conditions in LECI’s segregation unit. The report found that CCA had failed to ensure adequate medical care for segregated prisoners or provide proper oversight of the disciplinary system. CCA was also in violation of Department of

Rehabilitation and Correction (DRC) policy by triple-bunking prisoners in segregation units, and guards failed to provide those prisoners with at least one hour of daily exercise or sufficient laundry and bedding.

Less than two months later, according to a November 2012 re-inspection, most of those issues had been corrected.

“The conditions of confinement within the segregation area were vastly improved,” the November report said. “It is anticipated [triple-bunked cells] will be eliminated in the very near future as collaborative transfer efforts between LECI staff and the DRC Bureau of Classification staff action continues until completed.”

The September 2012 report had also noted that administrative staff at LECI, including the warden, assistant warden and department heads, did not visit the prison’s living and recreation areas on a weekly basis to communicate with prisoners and observe conditions, as required by DRC policy. The November re-inspection, however, found that administrators had started conducting regular rounds.

The increase in compliance was appar-

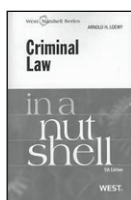
ently evident to prisoners, who, according to the re-inspection report, “were complimenting the change in atmosphere and ... felt better about how the process was going.”

While LECI’s medical facilities “did appear to be calm and [were] better organized and staff was knowledgeable of DRC policies,” the November 2012 report still found that “staffing levels are not where they should be” and recommended that “vacancies be filled as soon as possible to ensure staff has the resources needed to complete the required tasks.”

LECI was accredited by the American Correctional Association (ACA) following a December 2012 audit, in spite of the deficiencies cited in the various CIIC inspection reports. ■

Sources: “*LECI Audit Reinspection Report*,” *Ohio Department of Rehabilitation and Correction* (Nov. 15, 2012); *LECI Inspection Committee Report*, *Ohio Correctional Institution Inspection Committee* (Sept. 9 and 10, 2013); [www.drc.state.oh.us](http://www.drc.state.oh.us); [www.aclu.org](http://www.aclu.org); <http://citybeat.com>; [www.muckrock.com](http://www.muckrock.com); [www.wkyc.com](http://www.wkyc.com)

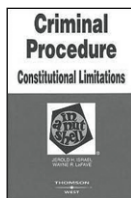
## New Titles Available in PLN’s Bookstore



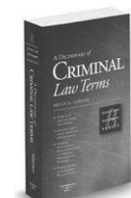
**Criminal Law in a Nutshell**, by Arnold H. Loewy, 5th edition, 387 pages. **\$43.95**



**Advanced Criminal Procedure in a Nutshell**, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **\$43.95**



**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFave, 7th edition, 603 pages. **\$43.95**



**A Dictionary of Criminal Law Terms (Black's Law Dictionary® Series)**, by Bryan A. Garner, 768 pages. **\$33.95**

### law offices of Susan L. Burke

Please contact me if you want to join the nation-wide class actions against telephone companies who have been overcharging inmates and their families for phone calls.

Susan L. Burke  
Law Offices of Susan L. Burke  
1611 Park Avenue  
Baltimore MD 21217  
Phone 410.733.5444  
Website: [www.burkepllc.com](http://www.burkepllc.com)

☐ Criminal Law in a Nutshell ☐ Advanced Criminal Procedures in a Nutshell ☐ Criminal Procedure  
☐ Dictionary of Criminal Law Terms

Amount enclosed (add \$6 S&H for orders under \$50; free shipping over \$50) \_\_\_\_\_

By ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**PRISON LEGAL NEWS**

PO Box 1151 • Lake Worth, FL 33460  
Tel [561] 360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

# Norris Henderson: A Profile of Commitment to Criminal Justice Reform

by Gary Hunter

**I**N 1977, NORRIS HENDERSON ARRIVED at the Louisiana State Penitentiary in Angola, more commonly known, then and now, as just Angola. With the weight of a life sentence on his shoulders, he had to confront the prison's legendary legacy of violence.

In 1930 it was estimated that one in every ten prisoners at Angola had been stabbed. In 1952, 31 prisoners known as the Heel String Gang severed their own Achilles' tendons to protest deplorable conditions at the facility. The last member of the group died in 2010, still locked away in Angola. Two prisoners were shot in 1999, one fatally, during a failed escape attempt in which a guard was killed.

But amid this violent history, during Norris Henderson's 27-year tenure at Angola other historic events were taking place – with Norris squarely at the center.

In 1987, violence was erupting in prisons across the country, including riots at federal facilities in Atlanta, Georgia and Oakdale, Louisiana. Guards were on edge as rebellious prisoners at Angola conspired to show the world once again how the facility got its violent reputation. Norris had a different idea. Using his position as a clerk in the law library, he persuaded some of the more educated, open-minded prisoners to try a progressive, political problem-solving approach.

"The idea was to initiate legislation that would provide some relief and hope of parole for men with life sentences," Norris told *PLN* during a September 2014 interview.

Angola has the highest number of lifers in the United States; as of June 30, 2014, 84.3% of the approximately 6,300 prisoners at Angola were serving life sentences.

Norris' idea caught on. Weeks turned into months as the legal team pushed its paperwork past state politicians. Their idea gained traction as lawmakers saw its potential, and relief seemed closer than ever. Then, in an ironic twist, the legislature passed a bill that granted relief to every prisoner except those with life sentences.

Norris was disappointed, but a victory is a victory and in the eyes of his peers Norris'

team had won. And so in 1987, the Angola Special Civics Project was founded.

Norris was just getting started, however. For the next 16 years he used his legal acumen to help his fellow prisoners secure their rights. Respect for his intellect and integrity grew among both prisoners and prison staff.

In the mid-1990s, Henderson led a month-long boycott of the prison's phone service provider, Global Tel\*Link. The protest sparked an investigation by Kathleen Blanco, chairperson of the Louisiana Public Service Commission at the time. She forced Global Tel to refund over \$1 million the company had gouged from the pockets of prisoners' families.

One prisoner, released with Henderson's help, returned the favor by contacting attorney Laurie White, who ended up working with Norris until his release in 2003. When he finally walked out of prison, he had already laid the groundwork for his life's mission. He knew exactly what he had to do.

Norris told *PLN*, "Most people who've been incarcerated didn't know what their voting rights are. Some thought it was 10 years after they got out, some thought you had to have a pardon, others thought they had lost the right to vote completely. Most candidates don't even see prisoners and their families as a constituency."

And so, just as he did while incarcerated, Norris began educating ex-prisoners on how to secure their legal rights through the political process. One year to the date of his release, Voice of the Ex-Offender (VOTE), an advocacy organization with Norris as executive director, was born.

VOTE rallied families around Kathleen Blanco's 2004 gubernatorial campaign, and she won the election handily. The organization has managed to fight jail overcrowding by having caps placed on prison beds, and to initiate criminal justice reform to curb police brutality. And in a stroke of poetic justice, Norris was able to help the attorney who had represented him during his last years in Angola.

Behind by 3,000 votes in a primary election, Laurie White, who was running

for judge, was struggling in her bid for the bench. VOTE mobilized its forces behind her campaign and she eventually won by 10,000 votes.

Norris Henderson was honored as Trailblazer of the Year in 2014 by the New Orleans Data News Weekly. He is the recipient of the American Civil Liberties Union's Ben Smith Award, received the Society of American Law Teachers' Human Rights Award and was honored by the City of New Orleans with Norris Henderson Day. He is a former Soros Justice Fellow.

When asked about his success, Norris invariably points to others who have influenced him. He says he was inspired by Ray Hill, an ex-con from Texas who went on to successfully establish his own prison radio talk show. [See: *PLN*, Nov. 2009, p.10]. Norris also credits *Prison Legal News* for keeping him on the cutting edge of legal trends and court decisions.

"In 1993, I was *PLN*'s first subscriber in Louisiana. I would use it to show guys in the law library what the courts were doing in other states. I would use *PLN* to help me push the envelope in our behalf," he said.

It is impossible to fathom the amount of pressure that nearly three decades in prison puts on a person. Most men are glad just to survive. But a few actually thrive despite their carceral circumstances, and Norris is living proof.

"You erase the years by raising the rights of the incarcerated," he stated. "Prison can be a bad experience with good results. You have to find your niche. You have to be committed."

To learn more about Norris Henderson and VOTE, visit [www.vote-nola.org](http://www.vote-nola.org). 

## Writing to Win

Need to write better? *Writing to Win* will teach you the basics of how to compose clear and convincing written and oral legal arguments! 270 pages packed with solid, practical advice and tips.

\$19.95 from *PLN*'s Book Store!  
See page 61 for more information.



# States Renewing Their Prison Phone Contracts

*As state DOCs renew or rebid their prison phone contracts, you can help urge them to lower intrastate phone rates and eliminate commission kickbacks!*

*The Campaign for Prison Phone Justice needs your help in:*

**\*\*\*\* North Dakota, Oklahoma, Washington \*\*\*\***

The Departments of Corrections in the above states are in the process of re-bidding or renewing their prison phone contracts. Most DOCs receive a commission (kickback) on revenue generated from calls made by prisoners, which results in excessively high phone rates. Although the FCC voted last year to cap the costs of interstate (long distance) prison calls, which went into effect on February 11, 2014, the order does not apply to intrastate (in-state) calls. An estimated 85% of prison phone calls are in-state. This is an opportunity to ask DOCs to forgo commissions and ensure their new prison phone contracts are based on the lowest cost to those who pay for the calls – mostly prisoners' families.

## **Take Action NOW! Here's What YOU Can Do!**

Ask your family members and friends to write, email, call and fax the DOC and the governor's office (addresses and contacts are listed below), requesting that the DOC: 1) forgo commission payments when re-bidding or renewing its prison phone contract, and 2) base the new contract on the lowest calling costs. Lower prison phone rates should apply not just to long distance calls but also to in-state calls. For a sample letter or to easily send an email, visit the Campaign for Prison Phone Justice's website and click on the "Take Action" tab:

**[www.phonejustice.org](http://www.phonejustice.org)**

### **Prison phone contract information & Contacts:**

**North Dakota:** Receives a 40% kickback; existing contract expires on 10-31-2014. Charges \$6.00 for a 15-minute collect intrastate call. **Contacts:** North Dakota DOC, Director Leann Bertsch, 3100 Railroad Avenue, Bismarck, ND 58502-1898; phone: 701-328-6362, fax: 701-328-6651, email: lebertsc@nd.gov. Governor Jack Dalrymple, State Capitol, 600 E. Blvd Ave., Bismarck, ND 58505-0001; phone: 701-328-2200, fax: 701-328-2205, email: governor@nd.gov

**Oklahoma:** Receives an effective kickback of 76.6%; existing contract expires 12-31-2014. Charges \$3.00 for a 15-minute collect intrastate call and \$3.00 for a local call. **Contacts:** Oklahoma DOC, Director Robert Patton, 3400 Martin Luther King Ave., Oklahoma City, OK 73111; phone: 405-425-2505, fax: 405-425-2578, email: terri.watkins@doc.state.ok.us. Governor Mary Fallin, Capitol Building, 2300 N. Lincoln Blvd. Rm. 212, Oklahoma City, OK 73105; phone: 405-521-2342, fax: 405-521-3353, email: [www.ok.gov/governor/#](http://www.ok.gov/governor/#) (click "E-mail Governor Fallin" under the "Contact the Governor" tab)

**Washington:** Receives a 51% kickback; existing contract expires on 12-31-2014. Charges \$3.50 for a 15-minute collect intrastate call and \$3.50 for a collect local call. **Contacts:** Washington DOC, Secretary Bernard Warner, P.O. Box 41100, Mail Stop 41100, Olympia, WA 98504-1100; phone: 360-725-8213, fax: 360-664-4056, email: doccorrespondenceunit@doc.wa.gov. Governor Jay Inslee, P.O. Box 40002, Olympia, WA 98504-0002; phone: 360-902-4111, fax: 360-753-4110, email: <https://fortress.wa.gov/es/governor> (use online email form)

# The Double-Edged Sword of Video Visitation: Claiming to Keep Families Together while Furthering the Aims of the Prison Industrial Complex

by Prof. Patrice A. Fulcher

**A**T FIRST GLANCE, JAIL/PRISON VIDEO visitation schemes may seem beneficial to incarcerated persons and their families, as well as correctional departments. Jail/prison video visitation systems claim to afford greater opportunities to stay connected with loved ones, help to alleviate correctional safety concerns and generate institutional revenues, which offset incarceration costs. Thus the implementation of video visitation in U.S. prisons and jails appears to be a viable, mutually beneficial solution to correctional visitation concerns.

However, by scratching the surface, the double-edged sword of video visitation is revealed. The reality of video visitation presents several issues: 1) the elimination of face-to-face visits removes essential human contact that is critical to the survival of incarcerated individuals; 2) almost all of the in-home video visitation services charge excessive fees, which in turn exploit family and friends of incarcerated individuals; and 3) the economic success of video visitation is contingent upon the number of incarcerated individuals – a decrease in prison population has a direct effect on revenue and profits, and therefore further incentivizes incarceration.

Video visitation has the potential to keep families connected, yet the elimination of face-to-face visits threatens to erode much-needed associations an incarcerated person has with their loved ones and community. For those incarcerated, sustaining a connection to the world outside jail/prison walls is vital to successful service of jail/prison sentences and re-entry into society upon release. Many correctional institutions lack sufficient bed space or ample facilities, so incarcerated persons are routinely sent to other institutions to serve their sentences. These other institutions are typically in rural areas, far from the sentenced person's community, so the extreme distance often prevents families and friends from making consistent visits.

In 2004, 62% of parents in state correctional facilities were incarcerated 100 miles or more away from their children and

communities, consequently 58% of these incarcerated persons never received a visit. In the same year in federal facilities, 84% of parents were incarcerated 100 miles or more away from their children and communities, and 44% never received a visit.

Jeffery Leving, a proponent of jail/prison video visitation, argues that it will help to reduce the negative effects on children who grow up with incarcerated fathers. Leving further states that children should be in safe, comfortable environments while visiting their parents, as opposed to unfavorable prison environments that may be traumatic to children. It may be true that a majority of jail/prison settings are distasteful (although correctional institutions should make every effort to create welcoming visitation areas), and that video visitation might help to alleviate Leving's concerns, but a greater problem arises when video visitation is used to completely eradicate face-to-face visits.

The Corinne Wolfe Children's Law Center purports that the most effective way of preserving the well-being of children of incarcerated parents is to allow contact visitation between the parents and children. The Center claims that the ability of children and parents to physically touch each other is instrumental to successful bonding; this also helps normalize the situation and interactions between the parent and child, while benefiting the children emotionally and behaviorally. Thus jail/prison video visitation should be a supplement, not a replacement, for correctional face-to-face and contact visitation.

Moreover, there is widespread concern for the elimination of face-to-face and contact visits. Some U.S. correctional facilities have already completely eliminated all visits aside from video visitation. At the Washington, D.C. jail, the complete elimination of face-to-face and contact visits has caused public uproar and a push by the District of Columbia Bar Association, the *Washington Post* editorial board and members of the D.C. Council to restore in-person visitation through the implementation of the Video Visitation

Modification Act. These groups contend that video visitation is impersonal and undermines rehabilitative efforts.

Video visitation is also problematic due to excessive fees associated with its usage. In most cases, the implementation of video visitation within correctional facilities does not create an additional expense for families and friends of incarcerated individuals. The issue lies with online video visitation costs, which run the risk of being exploitive. Correctional facilities have complete discretion in implementing rates and fees for online visits; as a result, jail/prison online video visitation fees are completely unregulated.

The unregulated nature of jail/prison video visitation has led to varying costs for the service, which are largely determined by the facilities. The Pennsylvania Department of Corrections charges families \$20 for a 55-minute visit, and the Virginia Department of Corrections charges \$15 for a 30-minute visit and \$30 for a 60-minute visit, whereas the Desoto County Jail in Hernando, Mississippi charges families \$20 for a 20-minute visit. If these fees continue to be unregulated, they will lead to the continued economic exploitation of family and friends of incarcerated persons.

For example, for the past twenty years, jail/prison telephone call fees were also unregulated. In August 2013, the Federal Communications Commission (FCC) found that such fees were exorbitant and voted to cap the cost of interstate jail/prison calls. Prior to the FCC's regulation, people were paying as much as \$17.30 for a 15-minute phone call to speak with incarcerated family and friends. Martha Wright, for instance, who filed a petition that led to the FCC's action, was forced to choose paying high telephone rates to speak with her incarcerated grandson on Sundays instead of paying for her prescribed medications.

Without regulation of prison/jail video visitation fees, companies such as Securus, GTL, Renovo and VuGate stand to enjoy substantial corporate financial gains, which

have shown to be millions of dollars. Correctional institutions are also generating funds from online video visitation. In Ada County, Idaho, the Sheriff claimed that virtual visits would generate \$2,000,000 over the course of two years. In Portsmouth, Virginia, the city contracted with a video visitation company called HomeWav. As a result of this contractual agreement, HomeWav grosses about \$1,400 a month and the Portsmouth Sheriff's Department receives about \$1,000 a month.

Moreover, the excessive fees and high financial gains associated with the use of jail/prison video visitation lead to incentivizing incarceration. The Prison Industrial Complex (PIC) is a multi-billion dollar profiteering industry rooted in the economic exploitation and dehumanization of extremely high numbers of human beings in U.S. jails and prisons. The PIC is one of the fastest-growing industries in the United States and generates revenues based on the mass incarceration of human beings.

The exclusive use of jail/prison video visitation systems has the potential to be another profiteering scheme of the PIC. Employing unregulated video visitation systems in jails and prisons will continue the frightful trend of incentivizing mass incarceration in the United States because this form of visitation offers vast economic opportunities for private companies and

correctional institutions.

Ultimately, jail/prison video visitation is a double-edged sword as currently implemented because it cultivates the value of monetary gain over the lives of incarcerated persons and their loved ones. The current trend of jail/prison video visitation will continue to dissolve community bonds and lead to unrelenting economic subjugation of incarcerated persons and their families if in-person visits are replaced with dehumanizing video visitation screens.

On the other hand, the use of jail/prison video visitation might advance altruistic as well as institutional goals if highly regulated and used in conjunction with, not in lieu of, face-to-face and contact visits; such visitation systems must not be emotionally and financially repressive. Accordingly, jail/prison video visitation should only be implemented as a means to strengthen family and community ties and promote successful re-entry, and if there are any associated fees they must be affordable and transparent. ■

*Professor Patrice A. Fulcher is a tenured Associate Professor at Atlanta's John Marshall Law School. Her publications focus on profiteering schemes in the Prison Industrial Complex. She advocates for the equality of the disenfranchised and quality legal representation for the poor, and wrote this summary of her research on video visitation exclusively for PLN.*

**The Drug Policy Alliance (DPA)** is the nation's leading organization promoting drug policies that are grounded in science, compassion, health and human rights.

DPA ([www.drugpolicy.org](http://www.drugpolicy.org)) is putting out a call for drug war stories. If you would like to be profiled in the media your story would be entered in a data base for possible use.

Please fill out the information asked below and send it to: **Drug War Stories Drug Policy Alliance, 15th Floor, 131 West 33rd Street, NY, NY 10018**

Name of the incarcerated individual \_\_\_\_\_

Current prison he/she is in \_\_\_\_\_

Ethnicity \_\_\_\_\_ Kind of drug involved \_\_\_\_\_

Length of sentence \_\_\_\_\_ Weapon involved (yes or no) \_\_\_\_\_

Contact information for person on behalf of imprisoned individual (email/phone number)

\_\_\_\_\_

Short story of your case \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# LEARN TO PROTECT YOUR RIGHTS

## YOU HAVE A RIGHT TO

- Adequate medical care
- Protection from assault
- Humane living conditions
- Safety from officer abuse

Learn how to defend your basic human rights with the comprehensive litigation guide, **Protecting Your Health and Safety**, 2nd edition, written specifically for prisoners who are unable to receive help from a lawyer.

Written by Robert E. Toone  
Edited by Dan Manville  
A Project of the Southern Poverty Law Center\*

**COST** \$16 total  
(\$10 + \$6 shipping/handling)  
FREE shipping/handling for orders from Prison Legal News over \$50

## ORDER A COPY

Send a check  
or money order to:  
**Prison Legal News**  
**PO Box 1151**  
**Lake Worth, FL 33460**  
**561-360-2523**

Be sure to include your name, identification number (if any), and mailing address. We also accept VISA and Mastercard. If using a credit card, please include the type of card (VISA or Mastercard), card number, and expiration date.

This book does not deal with legal defense against criminal charges or challenges to convictions that are on appeal. Edition last revised in 2009.

\*Please do not send orders to the Southern Poverty Law Center.

# Missouri DOC Must Provide Notice of Censorship

A FEDERAL DISTRICT COURT IN MISSOURI has approved a settlement agreement that requires Missouri Department of Corrections (MODOC) officials to provide notice when books and publications sent to state prisoners are censored and withheld.

The settlement resolves a class-action suit filed by Bobbie Y. Lane, owner of a publishing company called Caged Potential. In November 2010 and January 2011, the company mailed nine copies of a book titled *So Far From Paradise* to prisoners at the Crossroads Correctional Center. The book was written by Lane's cousin, Sultan K. Lane, who was incarcerated at the facility – a maximum-security lock-up in Cameron, Missouri.

The books were withheld under the MODOC's censorship policy, which did not require that publishers or other senders receive notice when publications were rejected. Alleging that the policy violated the company's right to due process under the 14th Amendment, Caged Potential sought an injunction requiring the MODOC to notify senders when publications are censored and grant them the right to appeal.

U.S. District Court Judge Nanette Laughrey entered a preliminary injunction on November 15, 2012, requiring the MODOC to provide notice and an opportunity for senders of censored publications to be heard. She also certified a class in the case composed of "all current and future publishers, distributors, and authors of written materials, who mail books, publications, or other written materials to inmates incarcerated in prisons operated by MODOC."

"There is no question that publishers who wish to communicate with those who, through subscription, willingly seek their view have a legitimate First Amendment interest in access to prisoners" and that "both inmates and publishers have a right to procedural due process when publications are rejected," Laughrey wrote. The court also held that requiring the MODOC to provide notice of censorship would not impose a burden on the defendants.

The parties then entered into settlement negotiations and formulated a draft plan, under which the "Defendants agree to notify the offenders within its correctional

facilities that senders of censored publications, personal correspondence, and pictures will receive notice of censorship decisions." The parties agreed to the settlement in January 2013.

Prison Legal News (PLN), which was not a named party in the case but would be affected by the terms of the settlement as a class member, petitioned the court to reject the agreement, contending that the proposed settlement was insufficient.

In its June 26, 2014 objection, PLN argued that the settlement agreement should not be approved because "it does not require that publishers and other senders be given notice of the censorship of their mail at the time that the censorship occurs, instead, there is an inordinate delay in between the act of censorship and the provision of due process notice to the sender."

Additionally, "While the agreement does require notice, it contains no time limit for the provision of such notice nor does it contain a requirement that senders be given an adequate explanation of the reason for censorship."

The ability of members of the class-action suit to enforce the settlement would be restricted, because "The agreement further prohibits fees and costs for monitoring defendants' compliance and it unfairly restricts the forum for bringing any

enforcement action to the Circuit Court of Cole County, Missouri," PLN wrote. "These restrictions make the prospect of monitoring compliance prohibitively expensive and would create unfair logistical hurdles for an aggrieved sender, rendering the settlement agreement effectively unenforceable."

The district court held a settlement approval hearing on July 1, 2014, acknowledging PLN's objections and ordering the defendants to post notice of the settlement agreement in the law libraries of all Missouri state prisons. Class members had 30 days to file objections to the settlement.

On September 5, 2014, the court held a second hearing and instructed the parties to submit a proposed order approving the settlement agreement. The settlement was approved by the district court and went into effect October 22, 2014.

The plaintiff class members are represented by the ACLU of Eastern Missouri and ACLU of Kansas and Western Missouri; PLN's objections were filed by Lance Weber, general counsel of the Human Rights Defense Center, PLN's parent organization. See: *Lane v. Lombardi*, U.S.D.C. (W.D. Mo.), Case No. 2:12-cv-04219-NKL.

PLN will report future developments in this case. ■

## Former Kansas Attorney General has Law License Suspended Indefinitely

by Christopher Zoukis

ON OCTOBER 18, 2013, THE KANSAS Supreme Court indefinitely suspended the law license of former State Attorney General Phillip D. "Phill" Kline, who became nationally known for his repeated prosecutions of Planned Parenthood and Dr. George Tiller, an abortion provider later murdered by an anti-abortion activist.

In a 154-page decision that detailed Kline's violations of the Kansas Rules of Professional Conduct, the unanimous state Supreme Court held there was "clear and convincing evidence" that he had demonstrated "overzealous advocacy" and failed to operate "within the bounds of the law." The Court concluded he had "violated his duties to the public, the legal system, and

the legal profession."

Kline, who served as Attorney General from 2003 to 2007, is now an assistant law professor at Liberty University in Virginia – a Christian-oriented school founded by evangelist pastor Jerry Falwell. He will be able to apply for reinstatement of his law license every three years.

The Supreme Court found Kline had engaged in misconduct when he had staffers attach sealed records to a public brief in violation of a court order, then ordered them to provide "misleading" information about their actions in an ensuing investigation.

He was also found to have repeatedly lied about how he obtained confidential patient records from Planned Parent-



hood while he was a district attorney. As a prosecutor, Kline filed at least 107 criminal charges against Planned Parenthood, charging the organization with performing illegal abortions and altering records. All of the charges were ultimately dropped, as were charges filed against various doctors associated with the clinic.

Kline became well known in connection with his aggressive prosecutions of Dr. George Tiller after being elected Attorney General. He appeared on Fox News' *The O'Reilly Factor* during a 2006 "Tiller the Baby Killer" campaign – an appearance that the Kansas Supreme Court found did not constitute misconduct. Dr. Tiller was murdered by anti-abortion activist Scott Roeder in May 2009.

Kline's attorney said the disciplinary board, which had recommended disbarment, "cherry-picked" incidents from Kline's past to paint a "false picture" of his conduct. While the Court did not make the suspension permanent, it wrote that "Kline's inability or refusal to acknowledge or address [the misconduct's] significance is particularly troubling in light of his service as the chief prosecuting attorney for this

State and its most populous county."

While in office, Kline served as the Chairman of the Republican Attorneys' General Association and Co-Chair of the National Violent Sexual Predator Apprehension Task Force, and was an executive committee member of the National Association of Attorneys General.

Kline appealed his indefinite suspension to the U.S. Supreme Court, which denied his petition for writ of certiorari in April 2014. Ironically, Kline had previously argued before the Supreme Court himself, in a 2006 death penalty case. See: *In re Kline*, 298 Kan. 96, 311 P.3d 321 (Kan. 2013), *cert. denied*. ■

Sources: [www.law.com](http://www.law.com), [www.rawstory.com](http://www.rawstory.com), [www.kansascity.com](http://www.kansascity.com), [www.standwithtruth.com](http://www.standwithtruth.com)

### **Hepatitis & Liver Disease: A Guide to Treating & Living with Hepatitis & Liver Disease**

Revised ed. By Dr. Melissa Palmer  
See page 61 for more information.

## **THE SENZA COLLECTION**

SENZA SPECIALIZES IN PROVIDING YOU SEVERAL CHOICES  
ALL NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY  
- OR -

NON NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY  
WE HAVE DIVIDED OUR CATALOGS INTO THESE CATEGORIES:

**CAUCASIAN/AFRICAN-AMERICAN/HISPANIC/ASIAN/MIXED HOTTIES**

EACH PAGE OF OUR CATALOGS HAS 99 GLORIOUSLY SEDUCTIVE LADIES POSING JUST FOR YOUR ENJOYMENT.

OVER 250 CATALOGS TO COLLECT AT JUST \$2.50 PER CATALOG

— HERE'S A LITTLE FREEBIE FROM SENZA TO YOU!!! —

ORDER YOUR FREE SENZA "99 HOTTIES" SAMPLE CATALOG

**JUST SEND US TWO U.S. FOREVER OR FIRST CLASS STAMPS AND A SELF ADDRESSED STAMPED ENVELOPE TO:**

**SENZA FREE CATALOG OFFER P.O. BOX 5840 BALTIMORE, MD 21282**

AND FOR THOSE THAT JUST CANNOT WAIT...TAKE ADVANTAGE OF THIS LIMITED TIME OFFER

SENZA'S INTRODUCTORY SPECIAL \*\*\*\*\*DIRTY DOZEN\*\*\*\*\*

\$19.99 GETS YOU ALL THIS + FREE SHIPPING AND HANDLING

12 EYE POPPING CATALOGS! EACH CATALOG HAS 99 PICS TO CHOOSE FROM ON EACH PAGE  
PLUS

12 4X6 RANDOM PRINTS FROM OUR MIXED HOTTIES SELECTION TO SHOW OFF SENZA'S 4X6'S PRINT QUALITY.  
ALL FOR JUST \$19.99

REMEMBER YOU MUST: SPECIFY NUDE OR NON-NUDE ON YOUR ORDER

SPECIFY YOUR INSTITUTIONS RESTRICTIONS AS TO THE NUMBER OF PRINTS ALLOWED IN ONE ENVELOPE.

SENZA CORPORATE POLICIES - PLEASE REVIEW THEM CAREFULLY

ALL SENZA COLLECTION IMAGES ARE SOLD AT A FLAT PRICE OF 0.35 CENTS EACH.

ANYONE WISHING TO PURCHASE 1000+ PRINTS AT ONE TIME WILL BE GIVEN A FLAT PRICE OF 0.30 CENTS PER IMAGE.

SENZA HAS A MINIMUM ORDER REQUIREMENT OF: \$15.00 THIS DOESN'T INCLUDE S&H CHARGES.

SHIPPING AND HANDLING CHARGES ARE AS FOLLOWS:

1 - 5 4x6 PRINTS - \$1.00 PER ENVELOPE / 6 - 15 4x6 PRINTS - \$1.50 PER ENVELOPE

16 - 25 4x6 PRINTS - \$2.00 PER ENVELOPE

YOU MUST NOTIFY SENZA ON THE ORDER FORM,

THE MAXIMUM NUMBER OF PRINTS YOUR INSTITUTION WILL PERMIT IN EACH ENVELOPE

SENZA WILL ACCEPT BRAND NEW U.S. FIRST CLASS POSTAGE STAMPS AT THE RATE OF \$5.00

FOR EACH BRAND NEW FLAT BOOK OF 20 STAMPS.

YOU ARE REQUIRED TO KNOW YOUR INSTITUTIONS POLICIES REGARDING WHAT IMAGES ARE ACCEPTABLE INTO YOUR FACILITY INSTITUTION.

THERE ARE NO EXCEPTIONS TO THIS POLICY. RETURNED/REJECTED MAIL - YOU WILL HAVE 15 BUSINESS DAYS TO SEND US A SASE (3 STAMPS PER 25 REJECTED PHOTOS) WITH A STREET ADDRESS IN WHICH TO MAIL YOUR RETURNED/REJECTED PRINTS.

AFTER 15 DAYS THE PRINTS ARE RETURNED TO OUR INVENTORY.

ALL SALES ARE FINAL/NO REFUNDS OR EXCHANGES

**NEW UPDATE 2014 Edition**

## **"WINNING HABEAS CORPUS & POST CONVICTION RELIEF"**

Attorney Kent Russell writes: "Now that I've been turned on to Winning Habeas Corpus, I always make sure that its close at hand."

Write briefs direct from book, actual quotes of text Not headnotes! Supreme Court up to Missouri v Frye 132 S.Ct. 1399 (2012);

**625 pages plus**

- ⇒ Ineffective Assistance of Counsel
- ⇒ Habeas Corpus Practice, AEDPA
- ⇒ Major constitutional issues, 4th, 5th & 6th Amendments
- ⇒ Plea bargain process
- ⇒ Sentencing errors
- ⇒ Equitable Tolling
- ⇒ Actual innocence, Exhaustion
- ⇒ Closing Argument & Jury Instructions
- ⇒ Parole, Immigration
- ⇒ Attorney advice, conflict, research

**Prisoner Price: \$58 (s/h incl.)**

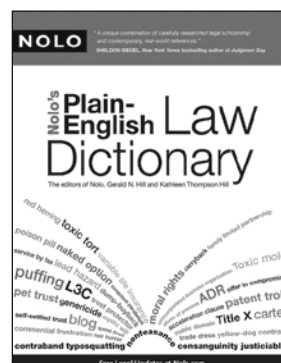
To: **FAST LAW PUBLISHING, Assoc.**

Box 577, Upland CA 91785

Or On-line: [www.fastlaw.org](http://www.fastlaw.org)



**NOLO**



## **Nolo's Plain-English Law Dictionary**

**\$29.99**

Order from

## **Prison Legal News**

P.O. Box 1151

Lake Worth, FL 33460

561-360-2523

Add \$6 shipping for orders under \$50

[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

# Alaska Supreme Court Suspends Former Deputy Attorney General

by Christopher Zoukis

**F**ORMER ALASKA DEPUTY ATTORNEY General and prosecutor Patrick Gullufsen, 66, was suspended from the practice of law for 18 months in July 2013 after a Superior Court found he had “blatantly lied” about forensic analysis of DNA evidence during the 2010 trial of Jimmy Eacker, who was found guilty of murder.

Eacker’s conviction was tossed out in early 2011 when Superior Court Judge Anna Moran determined that Gullufsen’s conduct amounted to a “flagrant, regardless or negligent disregard of the State’s obligation under the Alaska Constitution.”

Eacker later pleaded guilty to a lesser charge of manslaughter and was sentenced to 20 years in prison.

According to court records, Eacker was identified as the chief suspect by a “cold case” squad investigating a 1982 murder. While he was a key suspect in the 1980s, it was not until 2006 that an evidence custodian came across DNA evidence from the case and had it tested. Gullufsen used the DNA evidence

to suggest to the jury that blood and semen at the crime scene proved Eacker’s guilt.

However, he failed to tell the jury—or the defense—that a state expert said the evidence was not reliable due to its age and how it was stored; that it had been contaminated by a technician’s own DNA; and, perhaps most importantly, that the DNA profile did not match Eacker’s. Gullufsen had stonewalled Eacker’s defense attorney who requested information about the DNA test by claiming it had not been completed prior to trial.

Gullufsen retired from the Alaska Department of Law in 2010, and that agency is assessing whether “additional corrective steps are warranted,” such as a review of other cases involving the former prosecutor, who admitted to “misleading the court” in the Eacker murder trial.

Since Gullufsen had already retired, the suspension will have little effect. ■

Sources: [www.prosecutorialaccountability.com](http://www.prosecutorialaccountability.com), [www.adn.com](http://www.adn.com)

## Philadelphia Prosecutor Busted for Filing False Police Report Against Ex-Boyfriend

by Christopher Zoukis

**A**SSISTANT DISTRICT ATTORNEY LYNN M. Nichols, 47, assigned to the homicide unit in Philadelphia, was arrested on October 4, 2013 for filing a false police report as part of a scheme to seek revenge against an ex-boyfriend.

Nichols, a 22-year veteran of the District Attorney’s office, resigned following her suspension for ethical violations related to the scheme.

Her troubles involved a pickup truck driven by her ex-boyfriend that was owned by another woman, who had reported it stolen. In October 2012, to protect her boyfriend, Nichols convinced a Philadelphia police officer to remove the truck from the National Crime Information Center’s database of stolen vehicles.

A year later, months after breaking up with her boyfriend, Nichols went to the

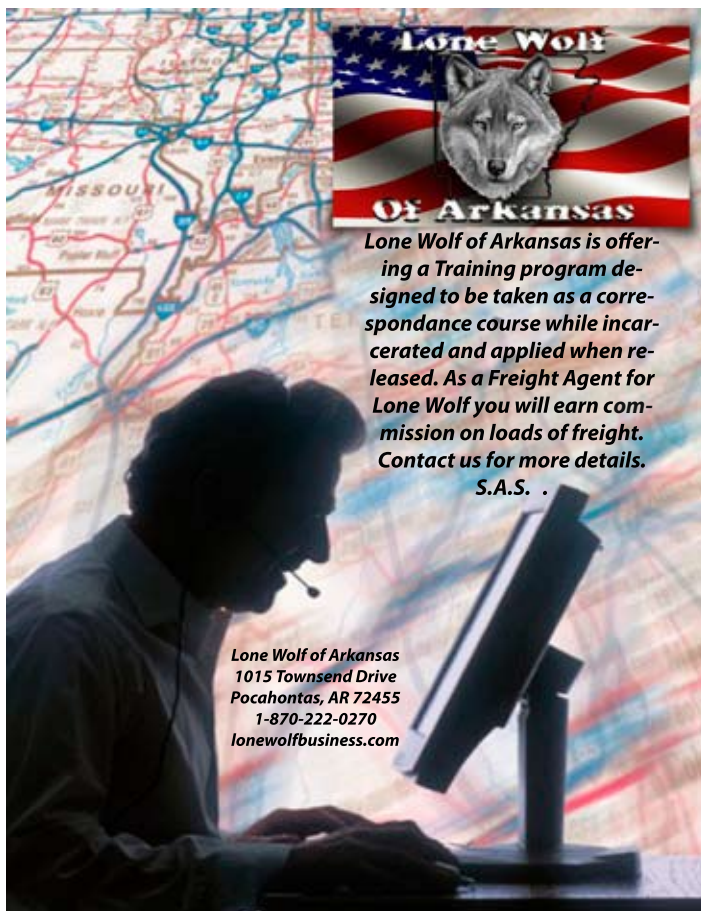
home of the truck’s owner and told her she knew where it had been stored for the last year. The two conspired to get revenge against Nichols’ ex. Nichols called 911 from the woman’s home phone, pretended to be the woman’s sister and filed a false police report claiming the vehicle had been stolen that day.

When the officers who took the report left, Nichols called a police department in New Jersey and said she had information that the “stolen” truck might be at a specific address. Officers located the pickup and determined it had not been stolen that day due to its condition. When they contacted the woman who owned the vehicle, she quickly confessed and admitted Nichols had put her up to the scheme.

Philadelphia District Attorney Seth Williams released a statement praising Nichols for her “long and successful career,” but said “[w]e must maintain the highest standards of conduct in [the District Attorney’s] office, and the legal process must take its course.”

Nichols pleaded guilty to a misdemeanor charge of criminal mischief. She was sentenced on July 18, 2014 to one year of probation and \$884 in restitution; charges of false reporting and obstruction of justice were dropped as part of the plea deal. She also has been suspended from practicing law by the Pennsylvania Supreme Court. ■

Sources: [www.nbcphiladelphia.com](http://www.nbcphiladelphia.com), [www.philly.com](http://www.philly.com), [www.metro.us](http://www.metro.us)



**Lone Wolf of Arkansas**  
is offering a Training program designed to be taken as a correspondence course while incarcerated and applied when released. As a Freight Agent for Lone Wolf you will earn commission on loads of freight. Contact us for more details. S.A.S. .

**Lone Wolf of Arkansas**  
1015 Townsend Drive  
Pocahontas, AR 72455  
1-870-222-0270  
[lonewolfbusiness.com](http://lonewolfbusiness.com)

# Prosecutorial Misconduct Results in New Trial in Connecticut Murder Case

by Christopher Zoukis

**I**N A RARE PUBLIC REBUKE OF A PROSECUTOR found to have engaged in a “deliberate pattern of misconduct,” the Connecticut Appellate Court vacated a defendant’s murder conviction based on the prosecutor’s improper remarks during closing arguments.

Senior Assistant State’s Attorney Terence D. Mariani, Jr. was chided in an opinion by Judge Michael R. Sheldon, writing for a three-judge panel in the direct appeal of Victor Santiago, who was found guilty of killing a Waterbury bar owner during a 1998 robbery. Santiago was not arrested in the case until 2010, when his estranged wife implicated him and his two brothers in the murder.

In ordering a new trial for Santiago, who had received a life sentence, the Appellate Court held that Mariani deliberately “flouted” a trial court’s ruling that limited references to Santiago’s alleged involvement in the Latin Kings gang to establish a basis

for Santiago’s wife’s fear of him. The court noted that Mariani repeatedly referred to Santiago’s connection with the Latin Kings during his closing arguments.

Santiago’s lawyer had complained that Mariani called her client a “gang banger” and made other references to the Latin Kings to attack Santiago’s character and intimate to the jury that he was a dangerous person. Mariani even made “inexplicable” degrading comments about Santiago’s wife and children before the jury, prompting the court to write that his remarks were “not only improper in a legal sense, but they were also rude and irrelevant to any of the issues in the case.”

More pointedly, the Appellate Court held in its May 28, 2013 decision that Mariani “had engaged in a deliberate pattern of improper conduct in this case and others.” The court took the unusual step of cataloging incidents in at least a half-dozen other published cases in which the prosecu-

tor had made improper comments, dating back more than a decade. For example, in a 2001 case Mariani had argued to the jury, “If I loaded that gun and shut out the lights in this courtroom and put it in [the defendant’s] hand, I think everyone would [see] how dangerous he is.”

In vacating Santiago’s murder conviction, the Appellate Court said it recognized that represented an extraordinary remedy, but that Mariani “remains undeterred by pronouncements of this court and our Supreme Court that his conduct was improper,” and “nothing short of reversal will have the effect of deterring him” from further misconduct. See: *State v. Santiago*, 143 Conn. App. 26, 66 A.3d 520 (Conn. 2013).

Mariani remains employed with the State’s Attorney’s office in Waterbury, Connecticut.

Sources: *Associated Press*, <http://connecticut.cbslocal.com>, [www.ctlawtribune.com](http://www.ctlawtribune.com)

## Professional Paralegal Services

"You Deserve Due Diligence, Not Just Due Process."



### PPS Is Prepared To Offer You:

- High quality parole packages with color photos -- \$250.00
- This includes:
- communicating with family and friends to help you coordinate your support system;
  - working closely with our clients in editing their package to maximize their potential for parole; and
  - explaining to family and loved ones how the parole process works.
- PPS also assists in obtaining court documents, case law, and legal records; \$40.00 min. plus the cost of the records
  - Explaining to families and loved ones the processes of prison life;

Let me use my behind-the-bars experience to help get you home

**Gary Hunter**  
411 McCauley Blvd  
San Antonio, TX 78221

(210) 422-3685 Fax (210) 922-4348  
letstalknowandlater@gmail.com

mSP | LAW



**Michael Soukup**  
Licensed in Wisconsin and Illinois

**Matthew Pinix\***  
Licensed in Wisconsin

## Appealing a Conviction? Hire an Appellate Attorney.

You wouldn't hire a **heart surgeon** to perform **brain surgery**. Don't hire a **trial attorney** to handle **your appeal**. Hire someone who focuses on **criminal appeals**.

Hire the **Law Office of Matthew S. Pinix**, attorneys with more than 10-years' combined experience handling **criminal appeals** in **Wisconsin and Illinois**.

**Law Office of Matthew S. Pinix, LLC**  
1200 East Capitol Drive, Suite 220  
Milwaukee, Wisconsin 53211  
(414) 963-6164  
[www.pinixlawoffice.com](http://www.pinixlawoffice.com)

- » Rated by Super Lawyers®
- » Rated by avvo.com
- » Better Business Bureau accredited



# Missouri Prisoner Exonerated in 1983 Prison Murder; Brady Violations Cited

by Christopher Zoukis

REGINALD “REGGIE” GRIFFIN, 53, was sentenced to death for the July 12, 1983 stabbing of James Bausley in a yard at the Moberly Correctional Center (then known as the Missouri Training Center for Men). In August 2011, the Missouri Supreme Court vacated Griffin’s conviction after finding the state had withheld evidence related to another prisoner who was likely involved in the murder.

That prisoner, Jeffrey Smith, was found with a sharpened screwdriver while attempting to leave the yard shortly after Bausley was killed; Smith was convicted of unlawful use of a weapon. The state Supreme Court found the prosecution had violated its *Brady* obligations by failing to disclose that information to Griffin, which would have bolstered his “alternate perpetrator” defense at trial. See: *State ex rel. Griffin v. Denney*, 347 S.W.3d 73 (Mo. 2011), *cert. denied*.

The 2011 vacatur of Griffin’s conviction was not the first time the Missouri Supreme Court had ruled in the case; it had previously vacated Griffin’s death sentence after finding the state wrongly relied on the criminal record of another prisoner with the same name as Griffin during the penalty phase of the trial. Griffin then received a life sentence and was removed from death row.

Another prisoner, Doyle Franks, was also convicted in connection with Bausley’s death; he admitted that he had killed Bausley and Griffin was not involved. A second co-defendant acquitted at trial had likewise denied that Griffin was involved.

In 2006, Paul Curtis, a prisoner who testified that he saw Griffin kill Bausley, admitted to state investigators that his testimony was false. He did not see Griffin commit the stabbing, but lied at trial in exchange for benefits such as a transfer to another prison, money and a TV set.

Remarkably, state prosecutors made no mention of Curtis’ recantation during Griffin’s habeas corpus proceedings in 2011. When questioned about that non-disclosure at a November 2012 hearing, Assistant Attorney General Stephen Hawke told a judge that since the habeas proceedings

were of a civil nature rather than criminal, the rules requiring pre-trial disclosure of exculpatory evidence did not apply. He said the state was “under no obligation to disclose” the evidence.

Although the state initially indicated it would retry Griffin for Bausley’s murder, the charges were dropped in October 2013 after prosecutors indicated they did not have sufficient evidence to convict him. Griffin had previously been released from prison on bond pending the state’s decision

to retry him.

“Thirty years of life – essentially stolen by shoddy investigation and prosecution – cannot be returned to Reggie,” said Rita Linhardt with Missourians for Alternatives to the Death Penalty. “Restitution is in order. At least he is alive and finally truly free.”

Sources: *Associated Press*, [www.huffingtonpost.com](http://www.huffingtonpost.com), [www.sfgate.com](http://www.sfgate.com), [www.moberlymonitor.com](http://www.moberlymonitor.com)

## Florida Prosecutor Suspended for *Ex Parte* Contact with Judge During Murder Trial

by Christopher Zoukis

A FLORIDA PROSECUTOR WHO ENGAGED in text messages, cell phone calls and dinner dates with the judge presiding over a capital murder trial has been suspended for two years by the Florida Supreme Court. The judge who engaged in the *ex parte* communications resigned and was later disbarred.

Former Broward County Assistant State Attorney Howard M. Scheinberg received the two-year suspension in June 2013 after appealing from the Florida Bar’s recommendation of a one-year penalty for his inappropriate contact with the judge, which violated Florida’s Rules of Professional Conduct. In imposing the harsher sanction, the Supreme Court cited “the serious nature of his misconduct, and the harm it caused to the administration of justice.” See: *Fla. Bar v. Scheinberg*, 129 So.3d 315 (Fla. 2013).

Scheinberg had exchanged some 471 text messages and 949 cell phone calls with Broward Circuit Court Judge Ana I. Gardiner, 52, during lengthy proceedings in the 2007 capital murder trial of Omar Loureiro, whom Gardiner sentenced to death.

The state’s first female Hispanic judge, Gardiner was disciplined by the Florida Judicial Qualifications Commission (JQC), which regulates, investigates and prosecutes Florida judges. A JQC panel found Gardiner had lied during the

ensuing investigation and she resigned in 2010.

Beyond their *ex parte* texts and phone calls during Loureiro’s murder trial, Scheinberg and Gardiner were spotted by another prosecutor, Sheila Alu, having dinner together and allegedly discussing the trial. Gardiner and Scheinberg denied they had spoken about the case.

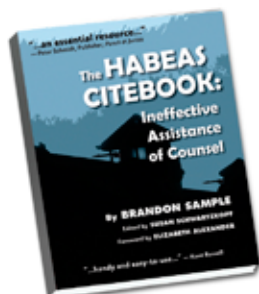
As a result of their misconduct, Loureiro was granted another trial with a new prosecutor and a different judge. He was subsequently sentenced to life in prison; his conviction was overturned by a state appellate court in October 2013, and the case remanded for yet another trial.

Gardiner was disbarred by the Florida Supreme Court on June 5, 2014 based on her “significant personal and emotional relationship” with Scheinberg during Loureiro’s first trial. She was also ordered to pay \$8,117.18 in costs.

“Considering Gardiner’s dishonest conduct and the harm that her actions have caused to the administration of justice in a capital first-degree murder case, we conclude that disbarment is the appropriate sanction,” the Court wrote. See: *Fla. Bar v. Gardiner*, 2014 Fla. LEXIS 1805 (Fla. June 5, 2014).

Sources: <http://blogs.findlaw.com>, [www.huffingtonpost.com](http://www.huffingtonpost.com), *Sun-Sentinel*





## The Habeas Citebook: Ineffective Assistance of Counsel

**\$49.95**

Brandon Sample  
ISBN: 978-0-9819385-1-6  
Paperback, 224 pages

The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an invaluable resource that identifies hundreds of cases where the federal courts have granted habeas relief to prisoners whose attorneys provided ineffective assistance of counsel.

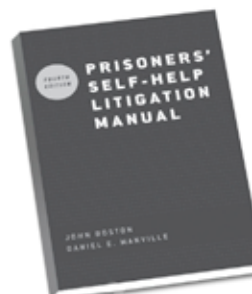


## Prisoners' Guerrilla Handbook to Correspondence Programs in the United States and Canada, 3rd Edition

**\$49.95**

Jon Marc Taylor  
ISBN: 978-0-9819385-0-9  
Paperback, 224 Pages

The greatly anticipated and newly updated third edition of the Prisoner's Guerrilla Handbook to Correspondence Programs in the United States and Canada has finally arrived! Author Jon Marc Taylor's brand new version is the latest in this unique and highly successful guidebook for the prisoner-student. This invaluable tool and how-to handbook provides the reader with step-by-step instructions to find the appropriate education program for correspondence high school, vocational, paralegal, undergraduate, and graduate courses offered in the U.S. and Canada today.



## Prisoners' Self-Help Litigation Manual, 4th Edition

**\$45.95**

John Boston & Dan Manville  
ISBN: 978-0-1953744-0-7  
Paperback, 960 pages

Prisoners' Self-Help Litigation Manual, in its much-anticipated fourth edition, is an indispensable guide for prisoner litigants and prisoner advocates seeking to understand the rights guaranteed to prisoners by law and how to protect those rights. Clear, comprehensive, practical advice provides prisoners with everything they need to know on conditions of confinement, civil liberties in prison, procedural due process, the legal system, how to actually litigate, conducting effective legal research, and writing legal documents. It is a roadmap on how to win lawsuits.

- ☐ Habeas Citebook,  
Ineffective Assistance of Counsel  
\$49.95
- ☐ Prisoners' Guerrilla Guide to  
Correspondence Programs  
3rd edition  
\$49.95
- ☐ Prisoners' Self-Help  
Litigation Manual  
4th edition  
\$45.95

**Shipping included in all prices**

**Order by mail, phone, or on-line.** Amount enclosed \_\_\_\_\_

By: ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

PUBLISHED BY

**PRISON LEGAL NEWS**  
Dedicated to Protecting Human Rights

PO Box 1151 • Lake Worth, FL 33460  
Tel 561-360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

## News in Brief

**Alabama:** A March 2, 2014 fight at the Elmore Correctional Facility resulted in eight prisoners being transported to Jackson Hospital, where three were admitted for further treatment. Details on the extent of the prisoners' injuries and the circumstances of the fight were not released.

**Argentina:** Raunchy photos depicting female jail guards and superintendents in various stages of undress surfaced in February 2014, several days after a female warden, Yamile Gomez, was stabbed to death by a prisoner already serving time for murder. The prisoner, Cesar de la Concepcion, was later found dead in his cell. Argentina is no stranger to prison scandals; recently, videos were posted online that showed guards and police torturing and abusing prisoners.

**Arizona:** AZFamily.com reported on February 13, 2014 that Maricopa County Sheriff Joe Arpaio's new, all-vegetarian menu sparked a hunger strike at the Estrella Jail. Prisoners complained that their meals were similar to dirt, dog food and dog excrement. Arpaio, in his usual elegant form, stated, "They ought to shut up and eat what they have." He claimed the new soy-based meals save the county a half-million dollars a year.

**Arizona:** Terry Wheeler, a probationary guard at Maricopa County's Fourth Avenue Jail, was determined to be the person responsible for a December 2013 leak in a high-pressure fire sprinkler water main that flooded the facility and forced the relocation of around 50 prisoners until their unit could be cleaned. Wheeler was fired on January 27, 2014 due to the incident, which disabled some of the jail's electrical equipment.

**Brazil:** On March 7, 2014, a mini-helicopter drone dropped a bag containing about a half-pound of cocaine onto the grounds of the Centro de Detencao Provisoria prison near Sao Paulo. Prisoners surrounded the package and carried it away; guards conducted a cell-by-cell search and eventually confiscated the drugs. Visitation at the facility was suspended following the incident.

**California:** L.A. County deputy Jermaine W. Jackson was the first county employee to be arrested for misconduct following an FBI investigation into the sheriff's department. Jackson initially faced charges for assaulting two prisoners. On

January 23, 2014, after an internal investigation by the sheriff's department, another set of charges was filed alleging Jackson had assaulted a third prisoner. Judge Roberto Longoria granted a request by prosecutors to merge Jackson's case with that of two other jail guards who reportedly conspired to cover up the assaults.

**California:** On March 11, 2014, a riot broke out on the maximum-security yard at Calipatria State Prison. Approximately 200 prisoners were involved in the fighting and seven suffered non-life-threatening injuries. Guards fired warning shots, pepper spray and rubber bullets, dispersing the riot in about eight minutes. No prison employees were injured.

**California:** In four separate incidents from February 28 through March 2, 2014, six women were arrested for attempting to smuggle drugs and other contraband into the maximum-security Calipatria State Prison during scheduled visits. The contraband was estimated to have a combined prison value of nearly \$48,000. Annette Fonoimoana, Tiayesh Blackwell, Brenda Luster, Shequesha Lawrence, Taryn McGill and Charlene Lepe were all arrested in connection with the smuggling incidents.

**Cyprus:** The chief of Cyprus' only correctional facility resigned on January 14, 2014 after a rash of suicides and the alleged gang rape of a prisoner focused attention on the prison. George Tryphoides defended his record by citing a reduction in the population at the chronically overcrowded facility. He blamed the government, rather than prison employees, for on-going problems at the prison. Justice Minister Ionas Nicolaou told Cypriot lawmakers that 50 prisoners had attempted suicide in the last year alone.

**Egypt:** Thirty-seven prisoners died in a police van in August 2013, and the officer in charge was sentenced on March 19, 2014 to 10 years in prison for manslaughter. Security forces had initially claimed that the prisoners were killed during an attempted escape, but interviews with survivors and 40 other people confirmed that they died due to asphyxiation from tear gas and overcrowding in the vehicle. The van had the capacity to hold 24 prisoners, but at the time of the incident 45 were being transported.

**Florida:** On March 14, 2014, Richard

Masten, director of the Miami-Dade Crime Stoppers program, was held in contempt of court and faced up to two weeks in jail. He had refused to turn over information concerning an anonymous tip, and when a judge ordered him to produce the documentation, Masten tore it up and ate it in the courtroom. "We promised the people that give us information to solve murders, serious violent crimes in this community, that they can call us with an assurance that they will remain anonymous," he said. The judge noted that Masten, a former police chief, had previously emailed the tip to prosecutors, and ordered him to write a paper on anonymous tip laws rather than imposing a jail term.

**Florida:** Two long-time guards at the Hamilton Correctional Institute have been arrested for money laundering, bribery and smuggling contraband cigarettes, narcotics and cell phones into the facility. On February 20, 2014, Tom Pierce and Johnnie Ruth Young were fired from their positions with the Florida DOC. A cell phone confiscated from a prisoner contained text messages between the prisoner and Young, and another prisoner told investigators that Pierce had received thousands of dollars in exchange for contraband. Both Pierce and Young were released on \$10,000 bond each.

**Florida:** On February 28, 2014, one Pinellas County jail guard was charged with assaulting a prisoner and another disciplined for not reporting the abuse and misrepresenting the incident. Detention Deputy Joel De Los Reyes summoned help from guard Adrian Nenu when De Los Reyes became involved in a verbal altercation with a juvenile offender that quickly turned violent. De Los Reyes never reported his use of force, which he later admitted was excessive, and Nenu described the assault as a "guided custodial touch" in a subsequent report. De Los Reyes resigned after an internal affairs investigation was initiated; he turned himself into the Pinellas County jail on charges of battery. Nenu received a seven-day suspension.

**Georgia:** Eddie King, Darius Knight, Deltonio Scott, Kevin Davis and Steven Alexander, all guards at the Autry State Prison, were arrested and fired in March 2014 following an investigation into widespread abuse of prisoners. The former guards face multiple charges that include

battery, violation of oath of office, tampering with evidence and simple battery. In one incident, Davis allegedly had Alexander destroy surveillance video of an assault on a prisoner. According to GDOC spokesperson Gwendolyn Hogan, "the Department takes allegations such as inmate abuse very seriously. It is believed that the abuse did occur, therefore these officers were terminated and referred for prosecution."

**Georgia:** On February 26, 2014, College Park jailer Montrez Hoskins was jailed himself after admitting to having sex with a female prisoner. The unidentified prisoner spoke to authorities after she was transferred to the Fulton County Jail, and Hoskins was quickly identified, arrested and placed in protective custody.

**Hawaii:** As previously reported in *PLN*, Halawa Correctional Facility guard James "Kimo" Sanders III was arrested in January 2014 and charged with bringing methamphetamine into the Oahu prison. [See: *PLN*, Sept. 2014, p.56]. On January 26, 2014, another Halawa guard, Mark Damas, was arrested and charged with conspiracy to distribute and possession with intent to distribute five grams or more of meth. Damas was transported to the Honolulu FBI division office for processing, then remanded to the Federal Detention Center.

**Illinois:** A worker with the PACE Institute, a program at the Cook County Jail that provides GED and literacy classes for detainees, was arrested on January 22, 2014 and charged with misconduct for having inappropriate sexual contact with a female prisoner. Lester Hill, 27, faces one

count of custodial sexual misconduct, a class 3 felony.

**Indiana:** Steven Blessing, 24, hung himself in his cell at the Westville Correctional Facility in 2012. On February 28, 2014, his mother filed suit against the Indiana Department of Corrections and individual prison guards. Blessing's mother claims Steven feared for his safety from several other prisoners and had asked to be moved to a higher-security unit; although his request was granted, he was instead told that he would be moved into the dorm with the prisoners he feared. He killed himself shortly thereafter. Blessing had been serving 10 years for aggravated battery.

**Indiana:** Jennings County jail guard Donald Bennett was arrested on December 26, 2013 as he reported for work at the facility. Bennett, who had been employed by the sheriff's department for only three months, admitted to smuggling cigarettes. He was charged with trafficking with an inmate, a Class D felony, and booked into the jail under a \$2,605 bond. According to news reports, Bennett also admitted to delivering a cell phone to a prisoner in exchange for cash. Jennings County Sheriff's Department Major Jerry Shepherd said Bennett was found to be in possession of contraband at the time of his arrest.

**Israel:** Prisoner Samuel Sheinbein, a dual citizen of the U.S. and Israel, was serving a life sentence for the 1997 murder of a Maryland teenager when he obtained a gun and shot three guards inside the Rimoni Prison on February 23, 2014. Israeli police returned fire, killing Sheinbein. He had fled

to Israel shortly after the murder, and the Israeli Supreme Court subsequently held that he could not be extradited back to the United States.

**Kentucky:** Former deputy Belinda Morton was fired from the Mason County Detention Center after investigators learned she gave her phone number to a male prisoner. Further, two prisoners reported to the sheriff's office that their IDs had been used to apply for unauthorized credit cards, and Morton was charged on March 6, 2014 with identity theft. The cards were traced to addresses that Morton had used in the past.

**Louisiana:** Judge Frank Marullo ordered an immediate drug test when prisoner Willis Turner appeared in court "too doped up to stand." The test returned positive results for opiates, and in response Orleans Parish Sheriff Marlin Gusman suspended several jail medical employees for not dispensing medications properly. Gusman, in a television interview on January 22, 2014, said it did not appear the drugs came "from the outside"; however, the next day sheriff's office spokesperson Phil Stelly said the jail's medical department did not prescribe opiates. Stelly confirmed the suspensions of medical staff but did not provide further details due to a pending investigation.

**Maine:** On March 8, 2014, two doors were left unlocked between the men's and women's maximum-security units at the Cumberland County jail, and a pair of prisoners were able to meet for a sexual tryst that lasted about 3½ hours. Jailers violated a policy that was instituted in 2012



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription!

Quarterly drawing WINS \$100! (Void in New York)  
(Last Quarter's winner from Airway Heights, WA.)

TELL YOUR FRIENDS! ACT NOW!!



PO Box 2063 • Fort Walton Beach FL. 32549

[www.InmateMagazineService.com](http://www.InmateMagazineService.com)

## Inmate Magazine Service

## News In Brief (cont.)

after a similar incident. The two prisoners, Renee Glantz and Michel D'Angelo, had jammed their cell door locks with toilet paper and took advantage of the security breach to meet in D'Angelo's cell. Neither will face criminal charges, though they do face disciplinary sanctions.

**Montana:** *PLN* previously reported on the case of Tisha Ann Brunell, a prison nurse accused not only of having sex with prisoners but also attempting to intimidate a witness to avoid conviction on the sex charges. [See: *PLN*, July 2014, p.56; Sept. 2013, p.17]. Brunell was found guilty of 48 charges related to the sexual assaults in March 2014, and the following month she pleaded guilty to tampering with evidence. She was sentenced on August 6, 2014 to 25 years in prison with 10 suspended. A five-year term for witness intimidation will run concurrently.

**Montana:** Kevin Briggs escaped from a police interview room on February 1, 2014, and two Bozeman police officers were suspended without pay for two weeks for dereliction of duty. Officer Lucas Chaffins and supervisor Tracy Senenfelder left Briggs

unattended for around 30 minutes. Chaffins had propped a chair against the door as he left the room, but surveillance video showed the cuffed and shackled Briggs checking the door handle then simply walking out. He was arrested in Portland, Oregon less than three weeks later.

**Montana:** Two guards and a prisoner were treated and released from Marcus Daly Memorial Hospital after an exhaust leak spread noxious fumes into the Ravalli County Jail on February 23, 2014. Prisoners reported a bad odor in the jail's west block and guards subsequently found several detainees suffering from headaches, nausea and burning eyes. The propane boiler was shut down and the area ventilated; prisoners were returned to the block after carbon monoxide levels were checked.

**New Jersey:** On February 11, 2014, a jury convicted former Essex County Jail guard Carlton Clark of aggravated assault and official misconduct for a videotaped 2011 beating of a female prisoner. Clark's attorney, Anthony Iacullo, said he and his client were "disappointed" in the verdict and would appeal. Iacullo had argued that the 40-year-old guard began punching Emirlene Philemon, 20, after she swung first. Another jail guard, Yasmina Allen,

admitted she had lied in a written report in an attempt to protect Clark; she testified against him after being granted immunity. Clark was sentenced to two concurrent five-year prison terms on April 3, 2014.

**New York:** Leslie Gemmette, a 12-year veteran guard at the Schenectady County jail, resigned in mid-January 2014 amid accusations that he had divulged confidential information about prisoners to other prisoners and guards, and discussed security features at the jail. One prisoner agreed to wear a wire and captured hours of conversations with Gemmette over a two-day period. Schenectady County Sheriff Dominic D'Agostino confirmed on January 29, 2014 that "an employee" had been fired but declined to comment further. Gemmette also refused to comment, saying he had signed several agreements requiring the circumstances of his resignation to remain confidential.

**New York:** Wallkill Correctional Facility guard Wayne A. Curry, Jr. was arrested on March 16, 2014 on charges of introducing contraband and official misconduct. He was arraigned and sent to the Ulster County Jail with a \$2,500 bond; an investigation found that Curry had brought unidentified contraband items into the prison.

**Ohio:** On January 31, 2014, a TV

## PLN Classifieds

### Connect with friends and family

Facebook page created and maintained for you. For more info send a SASE to  
ISN, 7749 Normandy, Suite 145 #317  
Jacksonville, FL 32221

### AMBLER DOCUMENT PROCESSING

Type, Design and Prepare Manuscripts for Self-Publishing  
Reasonable Rates! Accept all Genres!  
P.O. Box 938, Norwalk, CT 06852

### \*\*PRO SE LITIGATION MADE EASY\*\*

Dozens of forms, instructions, sample legal briefs and complete motion packs on prisoner issues in state & fed courts. Send SASE #10 env. for catalog to: B & B Enterprises, 3308 Rt. 940 Suite 104-3016, Mount Pocono, PA 18344

### The VOICES.CON Newsletter – Free

Written by lifers for lifers. For info on how to receive Voices.Con monthly, send SASE to: PO Box 361, King City, CA 93930.  
On the web at: [VoicesDotCon.org](http://VoicesDotCon.org);  
Email: [Publisher@VoicesDotCon.org](mailto:Publisher@VoicesDotCon.org)

### A DEGREE/ORDINATION FROM PRISON

Correspondence Courses via mail  
INT'L CHRISTIAN COLLEGE&SEMINARY  
PO BOX 530212, Debary, FL 32753  
Associates thru PhD \*ACCREDITED\*  
Tuition as Low as \$12.95 a month  
Send SASE for a Free Evaluation  
[www.iccscampus.org](http://www.iccscampus.org)

### Connect To Outside World

PP provides services via internet  
Your information Social networks  
5 sites 20 US 10 sites 35 US  
Free brochure Self stamped env  
Prisoner Promotions  
15050 Cedar Ave 116-166  
Apple Valley, MN 55124

### INMATE ALERT

FREE NON-NUDE SEXY PORNO STARS  
AND MODELS CATALOG.  
SEND SASE TO:  
TOTAL ACCESS SERVICES, PO BOX  
31764, CAPITOL HEIGHTS, MD 20731

### IF YOU WANT THE BEST TRY EPS!

Legal Research & Forms, Internet & People Searches, Amazon Books, Erotic Photos & Stories, PenPals, Special Requests and Much More.  
Send SASE to: Elite Paralegal & Prisoner Services, PO Box 1717, Appleton, WI 54912

### You've tried the rest; now put us

to the test. Quicker turn around (no waiting 4 weeks for your order like with other services) lower prices. We are DFL Research Services, 2851 Chloe Drive, Converse, TX 78109  
Send for information today



news station reported on the contents of the employee files of two Greene County jailers who had inappropriate relationships with female prisoners. Geoff Lewis resigned and Brian Marzluf was fired after investigators discovered they had committed sexual misconduct in separate incidents in 2013. Co-workers had reported the inappropriate relationships. In Marzluf's case, the prisoner told investigators that she had continued her relationship with the guard for several months after her release, while she was on probation.

**Ohio:** An internal investigation did not result in proof of misconduct, but an unidentified Ross County jailer was fired in February 2014 for "unsuccessful completion of probationary period." Officials released the investigative report on March 14, 2014 after prosecutors declined to pursue criminal charges against the guard, who was allegedly involved in a tobacco smuggling scheme.

**Oregon:** A commercial truck driver said he choked on a sip of coffee and passed out before barreling into a three-woman work crew from Multnomah County's Inverness Jail on February 11, 2014. The prisoners were picking up trash on Interstate 5 when two of the three women were struck by the truck; Angela Baca, 40, suf-

fered serious injuries while Lynette Urwin, 42, and Ruby Johnson, 31, were evaluated by paramedics at the scene before being returned to the jail. Department of Transportation spokesperson Kim Dinwiddie said the incident was "super-unfortunate." The remainder of Baca's jail sentence was dismissed after she was hospitalized.

**South Carolina:** On January 22, 2014, a female guard at the Leath Correctional Institution in Greenwood admitted to having a sexual relationship with a female prisoner. Nayschia Anderson, 23, was charged with second-degree sexual misconduct with an inmate and misconduct in office, malfeasance, misfeasance or nonfeasance in connection with the incident.

**South Carolina:** Terrance Lavon Watson, 33, a Clarendon County jail guard, was arrested and charged with credit card theft and fraud in February 2014 after a former prisoner reported unusual charges on his wife's credit card. Watson was charged with stealing the card and using it to pay more than \$350 in personal insurance bills. Officials said he was no longer employed at the jail.

**Tajikistan:** On February 16, 2014, an unnamed prison governor in the Khatlon province of the Central Asian country of

Tajikistan, a former Soviet republic, was stabbed to death with scissors by a prisoner whom the governor had ordered to give him a haircut. The prisoner used the scissors to stab the prison official once in the head and 16 times in the body. The governor died before reaching a hospital; the prisoner who killed him had been serving time for a fatal stabbing.

**Tennessee:** Bledsoe County Correctional Complex guard Alexander Bosland was arrested for beating his girlfriend on October 4, 2014, but police were more disturbed by what they found in his home. When authorities arrived on the scene they discovered bomb-making materials, terrorist literature, assault rifles and ammo. The Tennessee State Bomb and Arson Squad and federal Bureau of Alcohol, Tobacco and Firearms were notified and Bosland potentially faces both state and federal charges. He was initially charged with domestic assault, then released from jail on \$75,000 bond.

**Tennessee:** A former prisoner at the Maury County jail was run over by a county truck while working on a trash pickup detail in August 2013. On January 15, 2014, the county budget committee learned that Charles Allen Esmond's medical bills had reached about \$109,000 – funds not

#### **MIDNIGHT EXPRESS BOOKS**

THE PREFERRED & ONLY FULL TIME company helping inmate authors publish books for 10+ years.  
PO Box 69, Dept PLN,  
Berryville, AR 72616  
Midnightexpressbooks.com  
Corrlinks: MEBooks1@yahoo.com

#### **200 RANDOM PEN PAL ADS**

Fresh off the Interweb  
15% with photos. Approximately  
½ USA ½ Overseas. No Two Lists  
Are The Same. Free Shipping  
Rush \$19.98 To: Girls and Mags  
P.O. Box 552-PP  
North Dighton, MA 02764

#### **Education Behind Bars Newsletter**

Free electronic newsletter  
for prisoners via CorrLinks.  
Add news@prisonlawblog.com  
to subscribe. The content  
is curated specifically  
for prisoners.

#### **SURROGATE SISTERS**

Celebrating 18+Years in Business  
No Games. We Sell Photos of Sexy  
Women, Gifts for Loved Ones,  
Erotic Stories & Pen-Pal Service  
Free Info & Flyer Send SASE to:  
Surrogate Sister – PN  
PO Box 95043, Las Vegas, NV 89193

#### **Prisonerinmatefamilyservice.com**

Send a SASE for a free catalog;  
PO Box 1852, Pismo Beach, CA 93448  
We buy stamps — \$7.50 a book;  
Single stamps .25 cents; Amazon  
Orders, copies of photos/artwork  
And SO much more!  
FamilyInmateSev@aol.com

#### **LOCAL PHONE NUMBERS \$2.50/MO.**

USA anywhere 5¢/min. To MX 15¢  
Great rates all over the world!  
No signup fee, no hidden fees!  
Refer new cust, 300 free mins!  
www.FreedomLine.net to sign up  
or write FreedomLine, Box 7-WCB  
C'ville, IN 47331. Save BIG \$\$\$!

#### **\*\*Bottle Thoughts Gift Store\*\***

Show someone you are thinking of  
them by sending a Special Gift  
Send SASE for FREE Brochure  
PO Box 110752, Carrollton, TX 75011  
Corrlinks: sales@bottlethoughts.com  
Contact us 1-877-705-0425  
FREE Shipping on All Gift Orders

#### **Celebrity Photos For Sale:**

Send self-addressed stamped  
envelope for lists. Name stars  
you would like to order photos of  
Photos are Non-Nude.  
Photoworld-PLN  
PO Box 401016  
Las Vegas, NV 89140

#### **FINALLY REAL LADIES/REAL LETTERS**

Genuine, friendly, compassionate  
Writers! GUARANTEED RESPONSES!  
A service – a fee is involved  
Send \$3.00 & a SASE 4 Info.  
Nubian Princess Ent. Est 1998  
POB 37 PLN  
Timmons ville, SC 29161

budgeted for in the county's expenses and, further, not covered by insurance. Esmond is also seeking an undetermined amount of damages in a lawsuit in which he claims the driver of the county vehicle, Bobby Joe Norman, was under the influence of a controlled substance at the time of the accident.

**Texas:** Corrections Corporation of America's Mineral Wells Pre-Parole Transfer Facility was ground zero for a contraband scandal that led to the indict-

ment of two former guards, 11 former prisoners and five other people. According to information released on December 26, 2013, former guards Carl James Guittard and Terrie Elaine Glover were charged with bribery and providing tobacco to a prisoner at the facility. State officials opted not to renew CCA's contract to operate Mineral Wells and the prison closed on July 30, 2013. [See: *PLN*, July 2013, p.38]. In May 2014, Guittard and Glover pleaded guilty to bribery charges; they were each sentenced to 10 years' probation, 240 hours of community service and a \$1,000 fine.

**Texas:** On January 9, 2014, the U.S. Department of Justice's review panel on prison rape called on Harris County Sheriff Adrian Garcia to defend the county jail's dubious distinction of having one of the highest rates of sexual assault in the nation. A review of records between 2008 and 2010 revealed that more than 200 jail employees had been disciplined for rule infractions and state law violations related to sexual misconduct. In 2011, an internal investigation found "numerous" female prisoners had engaged in sex with guards in the jail's laundry rooms in exchange for favors. ■

## **Criminal Justice Resources**

### ***ACLU National Prison Project***

Handles state and federal conditions of confinement claims affecting large numbers of prisoners. Publishes the NPP Journal (available online at: [www.aclu.org/national-prison-project-journal-fall-2011](http://www.aclu.org/national-prison-project-journal-fall-2011)) and the Prisoners' Assistance Directory (write for more information). Contact: ACLU NPP, 915 15th St. NW, 7th Fl., Washington, DC 20005 (202) 393-4930. [www.aclu.org/prisons](http://www.aclu.org/prisons)

### ***Amnesty International***

Compiles information about prisoner torture, beatings, rape, etc. to include in reports about U.S. prison conditions; also works on death penalty issues. Contact: Amnesty International, 5 Penn Plaza, New York NY 10001 (212) 807-8400. [www.amnestyusa.org](http://www.amnestyusa.org)

### ***Center for Health Justice***

Formerly CorrectHELP. Provides information related to HIV in prison – contact them if you are not receiving proper HIV medication or are denied access to programs due to HIV status. Contact: CHJ, 900 Avila Street, Suite 102, Los Angeles, CA 90012. HIV Hotline: (214) 229-0979 (collect calls from prisoners OK). [www.centerforhealthjustice.org](http://www.centerforhealthjustice.org)

### ***Centurion Ministries***

Works to exonerate the wrongfully convicted, in both cases involving DNA evidence and those that do not. Centurion only takes 1-2 new cases a year involving actual innocence. They do not consider accidental death or self-defense murder cases, he said/she said rape cases, or child abuse or child sex abuse cases unless there is physical evidence. All case inquiries must be from the prisoner involved, in writing. Contact: Centurion Ministries, 221 Witherspoon Street, Princeton, NJ 08542 (609) 921-0334. [www.centurionministries.org](http://www.centurionministries.org)

### ***Critical Resistance***

Seeks to build an international movement to abolish the Prison Industrial Complex, with offices in Florida, California, New York, Texas and Louisiana. Publishes The Abolitionist newsletter. Contact: Critical Resistance, 1904 Franklin Street #504, Oakland, CA 94612 (510) 444-0484. [www.criticalresistance.org](http://www.criticalresistance.org)

### ***The Exoneration Project***

The Exoneration Project is a non-profit organization dedicated to working to free prisoners who were wrongfully convicted. The Project represents innocent individuals in post-conviction legal proceedings; typical cases involve DNA testing, coerced confessions, police misconduct, the use of faulty evidence, junk science and faulty eyewitness testimony, and ineffective assistance of counsel claims. Contact: The Exoneration Project, 312 North May Street, Suite 100, Chicago, Illinois 60607 (312) 789-4955. [www.exonerationproject.org](http://www.exonerationproject.org)

### ***Family & Corrections Network***

Primarily provides online resources for families of prisoners related to parenting, children of prisoners, prison visitation, mothers and fathers in prison, etc. Contact: F&CN, 93 Old York Road, Suite 1 #510, Jenkintown, PA 19046 (215) 576-1110. [www.fcnetwork.org](http://www.fcnetwork.org)

### ***FAMM***

FAMM (Families Against Mandatory Minimums) publishes the FAMMgram three times a year, which includes information about injustices resulting from mandatory minimum laws with an emphasis on federal laws. Recommended donation of \$10 for a subscription. Contact: FAMM, 1612 K Street NW #700, Washington, DC 20006 (202) 822-6700). [www.famm.org](http://www.famm.org)

### ***The Fortune Society***

Provides post-release services and programs for prisoners in the New York City area and occasionally publishes Fortune News, a free publication for prisoners that deals with criminal justice issues, primarily in New York. Contact: The Fortune Society, 29-76 Northern Blvd., Long Island City, NY 11101 (212) 691-7554. [www.fortunesociety.org](http://www.fortunesociety.org)

### ***Innocence Project***

Provides advocacy for wrongly convicted prisoners whose cases involve DNA evidence and are at the post-conviction appeal stage. Maintains an online list of state-by-state innocence projects. Contact: Innocence Project, 40 Worth St., Suite 701, New York, NY 10013 (212) 364-5340. [www.innocenceproject.org](http://www.innocenceproject.org)

### ***Just Detention International***

Formerly Stop Prisoner Rape, JDI seeks to end sexual violence against prisoners. Provides counseling resources for imprisoned and released rape survivors and activists for almost every state. Contact: JDI, 3325 Wilshire Blvd. #340, Los Angeles, CA 90010 (213) 384-1400. [www.justdetention.org](http://www.justdetention.org)

### ***Justice Denied***

Although no longer publishing a print magazine, Justice Denied continues to provide the most comprehensive coverage of wrongful convictions and how and why they occur. Their content is available online, and includes all back issues of the Justice Denied magazine and a database of more than 3,000 wrongly convicted people. Contact: Justice Denied, P.O. Box 68911, Seattle, WA 98168 (206) 335-4254. [www.justicedenied.org](http://www.justicedenied.org)

### ***National CURE***

Citizens United for Rehabilitation of Errants (CURE) is a national organization with state and special interest chapters that advocates for rehabilitative opportunities for prisoners and less reliance on incarceration. Publishes the CURE Newsletter. \$2 annual membership for prisoners. Contact: CURE, P.O. Box 2310, National Capitol Station, Washington, DC 20013 (202) 789-2126. [www.curenational.org](http://www.curenational.org)

### ***November Coalition***

Publishes the Razor Wire, a bi-annual newsletter that reports on drug war-related issues, releasing prisoners of the drug war and restoring civil rights. A subscription is \$10 for prisoners and \$30 for non-prisoners. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 684-1550. [www.november.org](http://www.november.org)

### ***Prison Activist Resource Center***

PARC is a prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, able-ism, heterosexism and classism, specifically within the Prison Industrial Complex. PARC produces a free resource directory for prisoners, and supports activists working to expose and end the abuses of the Prison Industrial Complex and mass incarceration. Contact: PARC, P.O. Box 70447, Oakland, CA 94612 (510) 893-4648. [www.prisonactivist.org](http://www.prisonactivist.org)

# Prison Legal News Book Store

Fill in the boxes next to each book you want to order, indicating the quantity and price. Enter the Total on the Order Form on the next page.  
**FREE SHIPPING on all book orders OVER \$50 (effective 8-1-2014 until further notice). \$6.00 S/H applies to all other book orders.**

## SUBSCRIBE TO PLN FOR 4 YEARS AND CHOOSE ONE BONUS!

1. SIX (6) FREE ISSUES FOR 54 TOTAL! OR
2. PRISON PROFITEERS (A \$24.95 VALUE!) OR
3. THE HABEAS CITEBOOK (A \$49.95 VALUE!)

**Prison Profiteers**, edited by Paul Wright and Tara Herivel, 323 pages. \$24.95. This is the third book in a series of Prison Legal News anthologies that examines the reality of mass imprisonment in America. *Prison Profiteers* is unique from other books because it exposes and discusses who profits and benefits from mass imprisonment, rather than who is harmed by it and how. 1063

**The Habeas Citebook: Ineffective Assistance of Counsel**, by Brandon Sample, PLN Publishing, 200 pages. \$49.95. This is PLN's second published book, written by federal prisoner Brandon Sample, which covers ineffective assistance of counsel issues in federal habeas petitions. Includes hundreds of case citations! 1078

**Prison Nation: The Warehousing of America's Poor**, edited by Tara Herivel and Paul Wright, 332 pages. \$35.95. PLN's second anthology exposes the dark side of the 'lock-em-up' political agenda and legal climate in the U.S. 1041

**The Ceiling of America, An Inside Look at the U.S. Prison Industry**, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. \$22.95. PLN's first anthology presents a detailed "inside" look at the workings of the American justice system. 1001

**Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada**, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, PLN Publishing, 221 pages. \$49.95. Written by Missouri prisoner Jon Marc Taylor, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, paralegal and college courses by mail. 1071

**The Criminal Law Handbook: Know Your Rights, Survive the System**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 608 pages. \$39.99. Explains what happens in a criminal case from being arrested to sentencing, and what your rights are at each stage of the process. Uses an easy to understand question-and-answer format. 1038

**Represent Yourself in Court: How to Prepare & Try a Winning Case**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 528 pages. \$39.99. Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. The authors explain what to say in court, how to say it, etc. 1037

**The Merriam-Webster Dictionary, New Edition**, 939 pages. \$8.95. This paperback dictionary is a handy reference for the most common English words, with more than 65,000 entries. 2015

**The Blue Book of Grammar and Punctuation**, by Jane Straus, 110 pages. \$19.99. A guide to grammar and punctuation by an educator with experience teaching English to prisoners. 1046

**Legal Research: How to Find and Understand the Law**, by Stephen Elias and Susan Levinkind, 568 pages. \$49.99. Comprehensive and easy to understand guide on researching the law. Explains case law, statutes and digests, etc. Includes practice exercises. 1059

**Deposition Handbook**, by Paul Bergman and Albert Moore, Nolo Press, 352 pages. \$34.99. How-to handbook for anyone who conducts a deposition or is going to be deposed. 1054

**Criminal Law in a Nutshell**, by Arnold H. Loewy, 5th edition, 387 pages. \$43.95. Provides an overview of criminal law, including punishment, specific crimes, defenses & burden of proof. 1086

## SUBSCRIBE TO PLN FOR 3 YEARS AND CHOOSE ONE BONUS!

1. FOUR (4) FREE ISSUES FOR 40 TOTAL! OR
2. PROTECTING YOUR HEALTH AND SAFETY (A \$10.00 VALUE!)

**Protecting Your Health and Safety**, by Robert E. Toone, Southern Poverty Law Center, 325 pages. \$10.00. This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how to enforce your rights, including through litigation. 1060

**Spanish-English/English-Spanish Dictionary**, 2nd ed., Random House. \$15.95. Spanish-English and English-Spanish. 60,000+ entries from A to Z; includes Western Hemisphere usage. 1034a

**Writing to Win: The Legal Writer**, by Steven D. Stark, Broadway Books/Random House, 283 pages. \$19.95. Explains the writing of effective complaints, responses, briefs, motions and other legal papers. 1035

**Actual Innocence: When Justice Goes Wrong and How to Make it Right**, updated paperback ed., by Barry Scheck, Peter Neufeld and Jim Dwyer, 403 pages. \$17.99. Describes how criminal defendants are wrongly convicted. Explains DNA testing and how it works to free the innocent. Devastating critique of police and prosecutorial misconduct. 1030

**All Alone in the World: Children of the Incarcerated**, by Nell Bernstein, 303 pages. \$19.95. Award-winning journalist Nell Bernstein takes an intimate look at the effects incarceration has on imprisoned parents and their children. 2016

**Everyday Letters for Busy People**, by Debra Hart May, 287 pages. \$21.99. Hundreds of sample letters that can be adapted for most any purpose, including letters to government agencies and officials. Has numerous tips for writing effective letters. 1048

**Roget's Thesaurus**, 717 pages. \$8.95. Helps you find the right word for what you want to say. 11,000 words listed alphabetically with over 200,000 synonyms and antonyms. Sample sentences and parts of speech shown for every main word. Covers all levels of vocabulary and identifies informal and slang words. 1045

**Beyond Bars, Rejoining Society After Prison**, by Jeffrey Ian Ross, Ph.D. and Stephen C. Richards, Ph.D., Alpha, 240 pages. \$14.95. *Beyond Bars* is a practical and comprehensive guide for ex-convicts and their families for managing successful re-entry into the community, and includes information about budgets, job searches, family issues, preparing for release while still incarcerated, and more. 1080

**Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A.**, by Mumia Abu Jamal, City Lights Publishers, 280 pages. \$16.95. In *Jailhouse Lawyers*, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned-advocates who have learned to use the court system to represent other prisoners. 1073

**With Liberty for Some: 500 Years of Imprisonment in America**, by Scott Christianson, Northeastern University Press, 372 pages. \$18.95. The best overall history of the U.S. prison system from 1492 through the 20th century. A must-read for understanding how little things have changed in U.S. prisons over hundreds of years. 1026

**Complete GED Preparation**, by Steck-Vaughn, 922 pages. \$24.99. This useful handbook contains over 2,000 GED-style questions to thoroughly prepare students for taking the GED test. It offers complete coverage of the revised GED test with new testing information, instructions and a practice test. 1099

**\* ALL BOOKS SOLD BY PLN ARE SOFTCOVER / PAPERBACK \***

**Hepatitis and Liver Disease: What You Need to Know**, by Melissa Palmer, MD, 457 pages. **\$19.99.** Describes symptoms & treatments of hepatitis B & C and other liver diseases. Includes medications to avoid, what diet to follow and exercises to perform, plus a bibliography. 1031 ☐

**Arrested: What to Do When Your Loved One's in Jail**, by Wes Denham, 240 pages. **\$16.95.** Whether a defendant is charged with misdemeanor disorderly conduct or first-degree murder, this is an indispensable guide for those who want to support family members, partners or friends facing criminal charges. 1084 ☐

**Prisoners' Self-Help Litigation Manual**, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 960 pages. **\$39.95.** The premiere, must-have "Bible" of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Highly recommended! 1077 ☐

**How to Win Your Personal Injury Claim**, by Atty. Joseph Matthews, 7th edition, NOLO Press, 304 pages. **\$34.99.** While not specifically for prison-related personal injury cases, this book provides comprehensive information on how to handle personal injury and property damage claims arising from accidents. 1075 ☐

**Sue the Doctor and Win! Victim's Guide to Secrets of Malpractice Lawsuits**, by Lewis Laska, 336 pages. **\$39.95.** Written for victims of medical malpractice/neglect, to prepare for litigation. Note that this book addresses medical malpractice claims and issues in general, not specifically related to prisoners. 1079 ☐

**Advanced Criminal Procedure in a Nutshell**, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **\$43.95.** This text is designed for supplemental reading in an advanced criminal procedure course on the post-investigation processing of a criminal case, including prosecution and adjudication. 1090 ☐

**Our Bodies, Ourselves**, by The Boston Women's Health Book Collective, 944 pages. **\$26.00.** This book about women's health and sexuality has been called "America's best-selling book on all aspects of women's health," and is a great resource for women of all ages. 1082 ☐

**Arrest-Proof Yourself**, by Dale Carson and Wes Denham, 288 pages. **\$14.95.** This essential "how not to" guide written by an ex-cop explains how to act and what to say when confronted by the police to minimize the chances of being arrested and avoid additional charges. Includes information on basic tricks that police use to get people to incriminate themselves. 1083 ☐

**Nolo's Plain-English Law Dictionary**, by Gerald N. Hill and Kathleen T. Hill, 496 pages. **\$29.99.** Find terms you can use to understand and access the law. Contains 3,800 easy-to-read definitions for common (and not so common) legal terms. 3001 ☐

**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFave, 7th edition, 603 pages. **\$43.95.** Intended for use by law students, this is a succinct analysis of constitutional standards of major significance in the area of criminal procedure. 1085 ☐

**Win Your Lawsuit: Sue in CA Superior Court without a Lawyer**, by Judge Roderic Duncan, 445 pages (4th edition 2010). **\$39.99.** This plain-English guide shows you how to prepare a complaint, file and serve papers, participate in settlement negotiations, present a case and much more. The 4th edition has been revised to reflect recent court procedures and includes updated forms. 2014 ☐

**Coming Soon! Disciplinary Self-Help Litigation Manual**, by Daniel Manville. By the co-author of the *Prisoners' Self-Help Litigation Manual*, this book provides detailed information about prisoners' rights in disciplinary hearings and how to enforce those rights in court. Published by Prison Legal News Publishing, this title should be available by Nov. 15, 2014.

#### Subscription Rates

	1 year	2 years	3 years	4 years
<b>Prisoners</b>	<b>\$30</b>	<b>\$ 60</b>	<b>\$ 90</b>	<b>\$120</b>
<b>Individuals</b>	<b>\$35</b>	<b>\$ 70</b>	<b>\$105</b>	<b>\$140</b>
<b>Professionals</b>	<b>\$90</b>	<b>\$180</b>	<b>\$270</b>	<b>\$360</b>

(Attorneys, agencies, libraries)

#### Subscription Bonuses

- 2 years** - 2 bonus issues for 26 total issues  
**3 years** - 4 bonus issues (40 total) or a bonus book as listed on pg. 61  
**4 years** - 6 bonus issues (54 total) or a bonus book as listed on pg. 61

(All subscription rates and bonus offers are valid as of 8-1-2014)



Purchase with Visa, MasterCard, AmEx or Discover by phone: **561-360-2523**

Or buy books and subscriptions online: **www.prisonlegalnews.org**



#### Mail Payment and Order to:

Prison Legal News  
P.O. Box 1151  
Lake Worth, FL 33460

All purchases must be pre-paid. Prisoners can pay with new first-class stamps (strips or books only, no single stamps) or pre-stamped envelopes, if allowed by institutional policies.

Please Change my Address to what is entered below ☐

#### Mail Order To:

Name: \_\_\_\_\_

DOC #: \_\_\_\_\_

Suite/Cell: \_\_\_\_\_

Agency/Inst: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

#### Subscribe to Prison Legal News

\$ Amount

6 month subscription (prisoners only) - \$18 \_\_\_\_\_

1 yr subscription (12 issues) \_\_\_\_\_

2 yr subscription (2 bonus issues for 26 total!) \_\_\_\_\_

3 yr sub (write below which FREE book you want) \_\_\_\_\_

or 4 bonus issues for 40 issues total!

4 yr sub (write below which FREE book you want) \_\_\_\_\_

or 6 bonus issues for 54 issues total!

Single back issue or sample copy of PLN - \$5.00 each \_\_\_\_\_

#### Books Orders (No S/H charge on 3 & 4-year

subscription free books OR book orders OVER \$50!) Qty.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Add \$6.00 S/H to BOOK ORDERS under \$50**

(PLN subs do not count towards \$50 for free S/H for book orders)

**FL residents ONLY add 6% to Total Book Cost**

**TOTAL Amount Enclosed:** \_\_\_\_\_

**\* NO REFUNDS on PLN subscription or book orders after orders have been placed. \***

**\* We are not responsible for incorrect addresses or address changes after orders have been placed. \***



## Great Self-Help Book Deals From Prison Legal News!



**Order from Prison Legal News**  
Add \$6 shipping for orders under \$50

Prison Legal News  
PO Box 1151  
Lake Worth, FL 33460  
Phone: 561-360-2523  
[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

### How to Win Your Personal Injury Claim

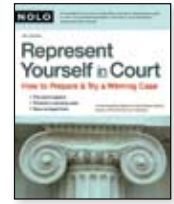
\$34.99

*How to Win Your Personal Injury Claim* shows you how to handle almost every accident situation, and guides you through the insurance claim process, step by step. Learn how to:

- protect your rights after an accident
- determine what your claim is worth
- handle a property-damage claim
- deal with uncooperative doctors, lawyers and insurance companies
- counter the special tactics insurance companies use
- prepare a claim for compensation
- negotiate a full and fair settlement
- stay on top of your case if you hire a lawyer



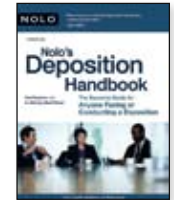
The Criminal Law Handbook  
\$39.99



Represent Yourself in Court  
\$39.99



Legal Research  
\$49.99



Nolo's Deposition Handbook  
\$34.99

**NOLO**  
YOUR LEGAL COMPANION



# PRISONLEGALNEWS.org

**Dedicated to Protecting Human Rights**

>>FREE Data Search |

Decisions

Investigations

Audits

Publications

Cases

Verdicts

Settlements

**If you need to know about prisons and jails or are litigating a detention facility case, you can't afford not to subscribe to our website!**

**Online subscribers get unlimited, 24-hour a day access to the website and its content!**

**Sign up for PLN's FREE listserv to receive prison and jail news and court rulings by e-mail.**

- ▶ PLN's website offers all issues of PLN in both searchable database and PDF formats. Issues are indexed and posted as soon as they go to press.
- ▶ Publications section has numerous downloadable government reports, audits and investigations from around the country.
- ▶ Full text decisions of thousands of court cases, published and unpublished.
- ▶ All content is easy to print for downloading and mailing to prisoners.
- ▶ Most complete collection of prison and jail related verdicts and settlements anywhere.
- ▶ Order books, print subscriptions and make donations on line.

- ▶ Brief bank with a wide assortment of winning motions, briefs, complaints and settlements.
- ▶ Links to thousands of prison, jail, criminal justice and legal websites around the world.
- ▶ Thousands of articles and cases, all fully indexed by more than 500 subjects, searchable by case name, case year, state of origin, court, author, location, case outcome, PLN issue and key word search.
- ▶ Search free, pay only if you find it!
- ▶ The highest quality, most comprehensive prison litigation news and research site in the world.

**Affordable rates to meet your budget**  
**\$19.95 per month • \$149.95 per year**

**Subscribe to Prison Legal News Online! <http://www.prisonlegalnews.org>**



## Prison Legal News

PO Box 1151  
Lake Worth FL 33460

Change Service Requested  
11/2014

Non-Profit Org.  
U.S. Postage  
PAID  
Portland OR  
Permit No. 3142

### Subscription Renewal

Subscriptions expire after the issue shown on the label is mailed. For example, if the label says: EXPIRES 02/2015, then the subscription expires after the February 2015 issue is mailed. Please renew at least 2 months before the expiration date. IF THE LABEL SAYS **EXPIRES: 11/2014** THIS IS YOUR LAST ISSUE. Please renew immediately to avoid missing any issues.

### Change of Address

If you move or are transferred, please notify PLN as soon as possible so your issues can be mailed to your new address! PLN only accepts responsibility for sending an issue to the address provided at the time an issue is mailed!

**New & Improved**



# INMATE SHOPPER

**New Owners**

**EXPANDED CONTENT IN EVERY ISSUE STARTS NOV. '14**

<b>Non Nude Girls</b> <b>Pen Pal Resources</b> <b>Gift Shops</b> <b>Catalogs to Order</b> <b>Sexy Photo Sellers</b> <b>Typists</b> <b>Personal Assistants</b> <b>Magazine Sellers</b> <b>Publishing Services</b> <b>Contains 250+ pgs.</b>	<b>SPORT SCHEDULES (seasonal)</b> <b>Football • Basketball • Hockey</b> <b>Baseball • Nascar • Soccer</b>  <b>SEGMENTS FROM THE ARTS</b> <b>Writing • Music • Art • Poetry</b>  <b>ENTERTAINMENT</b> <b>Puzzles • Trivia • Games • Hobbies • Jokes</b>  <b>SPECIAL FEATURE IN EACH ISSUE</b>	<b>Business Directory</b> <b>Business Ratings</b> <b>GLBT Section</b> <b>Contest for Writers &amp; Artists</b> <b>Articles, Tips &amp; Facts</b> <b>Resources</b> <b>New Content Every Issue</b> <b>Something for Everyone</b> <b>3 New Issues Per Year</b>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**No Order Form Needed:**  
CLEARLY WRITE ON PAPER & SEND WITH PAYMENT TO:  
**INMATE SHOPPER**  
BOX 533, NORTH DIGHTON, MA 02764  
[WWW.INMATESHOPPER.COM](http://WWW.INMATESHOPPER.COM)

⇒ Send Me the **CURRENT ISSUE** Inmate Shopper:

⇒ Send Me the **NEXT ISSUE** Inmate Shopper: ☐ March ☐ July ☐ Nov/Holiday

⇒ Send Me the **CENSORED ISSUE** Inmate Shopper Without Pen Pal Content & No Sexy Girls - No More Rejections

**Order Your New Copy Today... Only \$24.99 Incl. S&H w/tracking**



## Prison Bankers Cash in on Captive Customers

by Daniel Wagner

**P**AT TAYLOR DOESN'T BELIEVE IN GOING into debt. She keeps her bills in a freezer bag under her bed, next to old photo albums, and believes in paying them on time religiously. For Taylor, living within your means is part of being a good Christian.

Lately, Taylor, 64, has felt torn between that commitment and her desire to be a loving, supportive mother for her son Eddie.

Eddie, 38, is serving a 20-year prison sentence at Bland Correctional Center for armed robbery. He's doing his time at a medium-security Virginia state prison located 137 miles northwest of Johnson City, across the dips and valleys of the Blue Ridge Mountains here in the heart of Appalachia. The cost of supporting and visiting Eddie keeps going up, so Pat makes trade-offs.

"I would send him money even if it

broke me, because I do go without paying some bills sometimes to go see him," Pat says.

Between gas to make the trip and overpriced sandwiches from the prison vending machine, visiting Bland costs about \$50, a strain on her housekeeper's wages. So she alternates, visiting Eddie one week and sending him money the next.

To get cash to her son, Pat used to purchase a money order at the post office for \$1.25 and mail it to the prison, for a total cost of less than \$2. But in March of last year, the Virginia Department of Corrections informed her that JPay Inc., a private company in Florida, would begin handling all deposits into prisoners' accounts.

Sending a money order through JPay takes too long, so Taylor started using her debit card to get him funds instead. To send Eddie \$50, Taylor must pay \$6.95 to JPay. Depending on how much she can afford to send, the fee can be as high as 35 percent. In other states, JPay's fees approach 45 percent.

After the fee, the state takes out another 15 percent of her money for court fees and a mandatory savings account, which Eddie will receive upon his release in 2021, minus the interest, which goes to the Department of Corrections.

Eddie needs money to pay for basic needs like toothpaste, visits to the doctor and winter clothes. In some states families of prisoners pay for toilet paper, electricity, even room and board, as governments increasingly shift the costs of imprisonment from taxpayers to the families of prisoners.

"To give him \$50, I have to send \$70 off my card," says Taylor, who moved to a smaller apartment on the outskirts of Johnson City in part because of the rising cost of supporting Eddie.

"They're punishing the families, not the inmates."

### Price of prison

JPAY AND OTHER PRISON BANKERS COLLECT tens of millions of dollars every year from prisoners' families in fees for basic financial services. To make payments, some forego medical care, skip utility bills and limit contact with their imprisoned relatives. The Center for Public Integrity found in a six-month investigation.

Prisoners earn as little as 12 cents per hour in many places, wages that have not increased for decades. The prices they pay for goods to meet their basic needs continue to increase.

By erecting a virtual tollbooth at the prison gate, JPay has become a critical financial conduit for an opaque constellation of vendors that profit from millions of poor families with incarcerated loved ones.

JPay streamlines the flow of cash into prisons, making it easier for corrections agencies to take a cut. Prisons do so directly, by deducting fees and charges before the money hits a prisoner's account. They also allow phone and commissary vendors to charge marked-up prices, then collect a share of the profits generated by these contractors.

Taken together, the costs imposed by JPay, phone companies, prison store operators and corrections agencies make it far more difficult for poor families to escape poverty so long as they have a loved one in the system.

### Shifting costs to families

"IT'S NOT JUST THE MONEY TRANSFER that's the problem, it's the system it enables to shift costs onto families," says Lee Petro, an attorney who helped litigate for

## INSIDE

JPay Faces Fines	14
From the Editor	16
MA Prisoner Sex Change Case	18
PLN Settles CA Jail Suit	20
LA County Jail Phones	24
Prisoner Loses Baby at CCA Jail	28
Shackling Pregnant Prisoners	30
Debtors' Prisons in Las Vegas	36
Education Better than Punishment	38
NY Limits Solitary Confinement	42
Prisoners and Tax Fraud	46
Compassionless Releases in BOP	50
News in Brief	56



## **TAKE ACTION ON PRISON PHONE RATES – CONTACT THE FCC!**

After nearly a decade, the Federal Communications Commission (FCC) took action in 2013 and issued an order, effective February 11, 2014, that capped the cost of interstate (long distance) prison phone rates. This led to an almost 80% decrease in interstate phone costs in some states, and those costs are now capped at \$.25/minute for collect calls and \$.21/minute for debit and prepaid calls. **On November 21, 2014, the FCC’s Second Further Notice of Proposed Rulemaking was published in the *Federal Register*, seeking public comment on reducing in-state (intrastate) prison and jail phone rates and related issues, including ancillary charges. The deadline to submit a comment for the Second Further Notice of Proposed Rulemaking is January 5, 2015.**

You can submit a public comment to the FCC; even if you have sent comments before, you can resubmit them or submit new information. Please write to the FCC as soon as possible, addressing any of the following topics:

- **Positive Impact of the FCC Order Reducing Interstate Calls:** Let the FCC know how the rate caps on interstate prison phone calls have resulted in lower costs or helped you and your family!
- **Negative Impact of Intrastate Phone Calls:** While the FCC capped long distance phone rates, the order did not apply to in-state calls, which make up 85% of all calls from prisons and jails. How much do you or your family pay for in-state phone calls? The FCC needs to hear about this issue so they know why intrastate prison phone rates need to be reduced, too.
- **Ancillary Fees:** Do you or your family have to pay extra fees (ancillary fees) to make or accept calls, such as fees to set up, add money to or cancel a prepaid or debit prison phone account? Are you charged fees but were not told about them before they were charged? How much are these fees? Have they increased?
- **Importance of Prison Phone Reforms:** Tell the FCC why it is important to enact permanent reform of prison phone rates for interstate and in-state calls, including rate caps and the elimination of “commission” payments to corrections agencies. Also, the FCC needs details about fee-based video visitation services.

*Comments can be sent by mail to:*

**Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW; Room TW-B204  
Washington, DC 20554**

Address the letter “Dear Secretary Dortch,” and please speak from your personal experience. You must state the following in your letter: “This is a public comment for the Second Further Notice of Proposed Rulemaking for **WC Docket Number 12-375**.” Note that your comment will be made part of the FCC’s public docket.

People with Internet access can register their comments online with the FCC, by entering Proceeding Number **12-375** and uploading a document at this address: <http://apps.fcc.gov/ecfs/upload/display.action?z=nyy6z>

For more information about the fight to reduce prison phone rates, visit the Campaign for Prison Phone Justice:

**[www.phonejustice.org](http://www.phonejustice.org)**



## Prison Legal News

*a publication of the  
Human Rights Defense Center*  
[www.humanrightsdefensecenter.org](http://www.humanrightsdefensecenter.org)

### EDITOR

Paul Wright

### MANAGING EDITOR

Alex Friedmann

### COLUMNISTS

Michael Cohen, Kent Russell,  
Mumia Abu-Jamal

### CONTRIBUTING WRITERS

Matthew Clarke, John Dannenberg,  
Derek Gilna, Gary Hunter,  
David Reutter, Mark Wilson,  
Joe Watson, Christopher Zoukis

### RESEARCH ASSOCIATE

Mari Garcia

### ADVERTISING DIRECTOR

Susan Schwartzkopf

### LAYOUT

Lansing Scott

### HRDC LITIGATION PROJECT

Lance Weber—General Counsel  
Sabarish Neelakanta—Staff Attorney

### PLN is a monthly publication.

A one year subscription is \$30 for prisoners, \$35 for individuals, and \$90 for lawyers and institutions. Prisoner donations of less than \$30 will be pro-rated at \$3.00/issue. Do not send less than \$18.00 at a time. All foreign subscriptions are \$100 sent via airmail. PLN accepts Visa and Mastercard orders by phone. New subscribers please allow four to six weeks for the delivery of your first issue. Confirmation of receipt of donations cannot be made without an SASE. PLN is a section 501 (c)(3) non-profit organization. Donations are tax deductible. Send contributions to:

**Prison Legal News**

**PO Box 1151**

**Lake Worth, FL 33460**

**561-360-2523**

**[info@prisonlegalnews.org](mailto:info@prisonlegalnews.org)**

**[www.prisonlegalnews.org](http://www.prisonlegalnews.org)**

PLN reports on legal cases and news stories related to prisoner rights and prison conditions of confinement. PLN welcomes all news clippings, legal summaries and leads on people to contact related to those issues.

Article submissions should be sent to - The Editor - at the above address. We cannot return submissions without an SASE. Check our website or send an SASE for writer guidelines.

Advertising offers are void where prohibited by law and constitutional detention facility rules.

PLN is indexed by the *Alternative Press Index*, *Criminal Justice Periodicals Index* and the *Department of Justice Index*.

## Prison Bankers Cash In (cont.)

a national cap on some prison phone rates. Without companies like JPay, he says, "it would be much harder to take money from families and make families of inmates pay their own keep."

In 12 years, JPay says it has grown to provide money transfers to more than 1.7 million offenders in 32 states, or nearly 70 percent of the prisoners in U.S. prisons.

For the families of nearly 40 percent of those prisoners, JPay is the only way to send money to a loved one. Others can choose between JPay and a handful of smaller companies, most of them created by phone and commissary vendors to compete with the industry leader. Western Union also serves some prisons.

JPay handled nearly 7 million transactions in 2013, generating well over \$50 million in revenue. It expects to transfer more than \$1 billion this year. (The company declined to provide any financial details; those included in this article are culled from public records and interviews with current and former employees).

"We invented this business," said Ryan Shapiro, 37, the company's founder and CEO, in a phone interview in June. "Everyone else tries to imitate what we did, and they don't do it as well."

Shapiro says working with corrections includes extra costs for security and software integration. He says he charges only as much as he must to maintain a razor-thin profit margin.

But others provide similar services for less.

NIC Inc., a competitor that helps states set up their websites, charges a flat fee of \$2.40 in Maine to send money to prisoners. Until recently, Arkansas charged 5 percent to send money through the state's own web portal. Floridians pay a fee of 3.5 percent to handle traffic tickets online.

Despite its kudzu-like growth, JPay so far has avoided scrutiny by consumer regulators.

In response to questions for this story, however, the New York Department of Financial Services' consumer division is reviewing the company's practices, according to a person familiar with the matter. The person spoke on condition of anonymity because he is not allowed to discuss active investigations.

JPay's rapid rise stems in part from the generous deal it offers many prison systems. They pay nothing to have JPay take over handling financial transfers. And for every payment it accepts in these states—prisoners typically receive about one per month—the company sends between 50 cents and \$2.50 back to the prison operator. These profit-sharing arrangements, which vendors offer as deal-sweeteners in contract negotiations, are known in the industry as "commissions."

JPay's payments to Illinois last year came to about \$4,000 a month, according to documents obtained under the state's open records law. [Ed Note: Tennessee's prison system received \$60,789 in JPay prison money transfer commissions in fiscal year 2013-14].

Jails often deduct intake fees, medical co-pays or the cost of basic toiletries first, leaving the account with a negative balance. This prevents prisoners from buying "optional" supplies like stationery or sturdier shoes until they have paid down the debt.

Such charges levied by jails for common items are not new. The practice began prior to the rise of JPay, mainly with phone companies and operators of prison stores. But by automating the process, prison bankers make it a lot easier.

### \$100 underwear

NEGATIVE ACCOUNT BALANCES DISCOURAGE cash-strapped people from helping relatives, says Linda Dolan, 58, a manager for a defense contractor in California. Last year, when her son was sentenced to 20 days in jail in St. Lucie County, Florida for reckless driving, Linda wanted to buy him a second pair of underwear and socks. But the county's intake fee and daily "rent" already had put the account about \$70 in the red. Linda and her husband both were out of work and couldn't afford to pay \$100 for a pair of underwear.

"If relatives are putting money on somebody's books while they're an inmate, it's to help them buy necessities," Linda says. "I didn't think it was right that the county was stealing the money."

Capt. William Lawhorn of the St. Lucie County sheriff's office said that prisoners are charged a \$25 initial booking fee, \$3 a day for "subsistence" and medical co-pays, all of which can result in a negative balance. He said nobody is denied any type of needed service or care, and when prison-

## Prison Bankers Cash In (cont.)

ers do have money, it's used for candy and other junk food. Prisoners in the county receive payments through Touchpay, a JPay competitor that often partners with foodservice giant Aramark.

Funding prisons out of the pockets of families and prisoners has non-financial costs too, says Brian Nelson, who spent 28 years in an Illinois state prison for murder. Nelson says he has "become an asset to society" since he was released four years ago because he stayed in touch with family and priests even when he was in solitary confinement. When prisoners can't afford to maintain contact with the outside world, he says, they are less equipped to transition smoothly to civilian life.

The effect on poor families is especially harsh, Nelson says: "It's a wife that has three children at home, and her husband is in jail, so now she has a choice: Do I send money to him so he can afford to stay in touch with the kids, or do I feed the kids?"

Prisoners' need for money is inescapable, Nelson says. Those in northern Illinois

are not issued cold-weather clothes, he says, leaving them vulnerable to frostbite unless they can get money to pay for prison-approved long underwear and boots.

### Razor thin margins

JPAY FOUNDER SHAPIRO IS EAGER TO TELL his company's story and how he believes it helps families. It's not just about faster payments. Once a prisoner gains access to the money, JPay offers several ways to spend it, including pay-per-page e-messaging, music downloads and MP3 players. When prisoners in some states are released, they receive their remaining money on Jpay-branded payment cards that carry higher fees than those on most consumer payment cards.

Shapiro says that if his fees were any lower, his company would lose money. He declined to make the company's financial details available and would not say how much he is paid.

Shapiro serves on the board of a foundation that advocates for prisoners and carries full-page ads for JPay in its newsletters. The foundation received an \$85,400 gift directly from JPay's corporate treasury in 2009.

He lives on a tiny harbor island near the northern tip of Miami Beach in a home he bought for about a million dollars. Last year, through a company he controls called El Caballero LLC, Shapiro bought a custom powerboat, dubbed Sea Block, that retails for a half-million dollars.

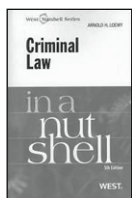
Heading to the company's headquarters one July morning, he stopped first for CrossFit, a military-style training regime that he enjoys because it brings out his competitive side, then for daily prayer.

Families who use JPay love the company, he says. He boasts of its well-trafficked web forum and of the 174,000 "likes" on its Facebook page, where its marketers post cheery articles about incarceration. "The Jail Cats program at Gwinnett County Detention Center in Georgia is rescuing kittens and helping to rehabilitate incarcerated women," one recent post read.

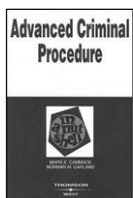
"We go out of our way to make sure that they feel comfortable—that, you know, you're spending money with a company that cares about you," Shapiro says.

If people don't want to pay his fees, Shapiro says, they can always mail a money order, except in the "couple of states" that

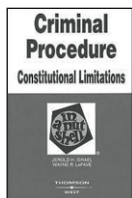
## New Titles Available in PLN's Bookstore



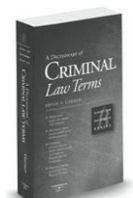
**Criminal Law in a Nutshell**, by Arnold H. Loewy, 5th edition, 387 pages. **\$43.95**



**Advanced Criminal Procedure in a Nutshell**, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **\$43.95**



**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFave, 7th edition, 603 pages. **\$43.95**



**A Dictionary of Criminal Law Terms (Black's Law Dictionary® Series)**, by Bryan A. Garner, 768 pages. **\$33.95**

- ☐ Criminal Law in a Nutshell ☐ Advanced Criminal Procedures in a Nutshell ☐ Criminal Procedure  
☐ Dictionary of Criminal Law Terms

Amount enclosed (add \$6 S&H for orders under \$50; free shipping over \$50) \_\_\_\_\_

By ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

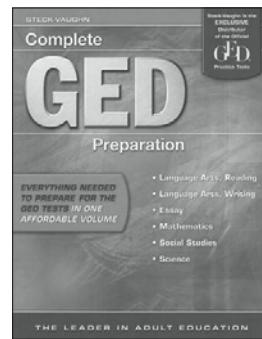
Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**PRISON LEGAL NEWS**

PO Box 1151 • Lake Worth, FL 33460  
Tel [561] 360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)



### Complete GED Preparation [Paperback]

Publisher: Steck-Vaughn; 2nd edition  
928 pages; \$24.99; Item #: 1099

Over 2,000 GED-style questions thoroughly prepare learners for test day. This single book offers thorough coverage of the revised GED Test with new test information, instruction, practice, and practice tests. Answer key included.

Order from: **Prison Legal News**  
(Add \$6 shipping for orders under \$50)  
**PO Box 1151**  
**Lake Worth, FL 33460**  
**Phone: (561) 360-2523**  
**[www.prisonlegalnews.org](http://www.prisonlegalnews.org)**

now charge fees for them.

Nearly 400,000 people are imprisoned in states where there is no free deposit option, a fact Shapiro was unaware of during a series of interviews this summer.

"When it's up to us, it's absolutely free," he says.

### Slow-moving money orders

FOR THE FIRST 14 YEARS OF EDDIE'S sentence, Pat Taylor mailed money orders directly to the prison at no charge beyond the cost of the money order and a stamp. Then last year, she was instructed to make the money order out to JPay and send it to a Florida post office box. The company would credit it to Eddie's account.

Under the new system, she says, it would take weeks for Eddie to see funds sent via money order. So Pat, like nearly everyone else she knows, gave in and began paying \$6.95 to send the money from her debit card.

Across the country, delays and other obstacles make the "free option" inaccessible to many families, The Center for Public Integrity found. More than a dozen families in five different states said that money orders

have been credited much more slowly since JPay took over.

Shapiro says he is "absolutely shocked" by the complaints that money orders are delayed because he had never heard of such problems before. Most money orders are processed within two to three days, he said, unless the person sending money fails to fill out the form properly. He said Virginia is especially efficient and processes money orders within 24 to 48 hours.

"We are not slowing it down, there is no conspiracy," he said.

He said JPay does "want people to convert from a money order customer to a digital customer, absolutely," but only because electronic payments are more efficient. "We're not trying to make an extra dollar everywhere we can," Shapiro said.

Before JPay, Virginia prisons credited money orders to prisoners' accounts in roughly three days, families say. Today, money orders can take more than a month to reach a prisoner's account, Marvin Rodriguez-Barrera, a prisoner at Virginia's high-security Red Onion State Prison, wrote in a letter to prisoners' rights advocates in February.

### Faster to Guatemala

"I AM FROM CENTRAL AMERICA, AND IT is cheaper for my family, and easier, to send money to Guatemala than for my family to send me money from this very state!" Rodriguez-Barrera wrote. "The old way of using money orders was cheaper, easier and in many instances faster."

Those seeking to avoid the fees by sending a money order must print and fill out a Jpay-provided form whose instructions are dwarfed by large print barking at them to "Put down your pen! Put away your car keys!" because "There's a faster way to send money, go to JPay.com and sign up now!"

The aggressive marketing has worked. One former marketing director for the company lists as a key accomplishment on his LinkedIn profile that he "Converted 78 percent" of money order users to online users, boosting the company's annual revenue by \$985,000.

Shapiro said the information in the profile, including the former employee's title, was inaccurate. He said he didn't have data on how many money order users con-



## Need Post Conviction Relief?

Contact [helpmetimberwolf@googlegroups.com](mailto:helpmetimberwolf@googlegroups.com)

**Timberwolf Litigation and Research Services LLC**

**Specializes in Federal Post Conviction Relief**

**All Work done under supervision of licensed counsel.**

- |                                                                                             |                                                                                            |
|---------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| ★ First direct appeal briefs                                                                | ★ Petitions for rehearing                                                                  |
| ★ Motions for return of personal property (rule 41)                                         | ★ Writs of Certiorari to the U.S. Supreme Court                                            |
| ★ Challenges to conditions of supervised release                                            | ★ Clemency and pardon applications                                                         |
| ★ Sentence Reduction Motions and Memorandums under 28 USC 2241, 2255, and 18 USC 3582, 3583 | ★ Challenges to constitutionality of Federal and State statutes and reporting requirements |
| ★ Background research and FOIA requests                                                     | ★ Institutional medical malpractice claims                                                 |

For more information, call toll free 1-855-712-5276

If your phone system does not allow toll free or collect calling, then put us on your approved call list and call us direct at (260) 243-5649.

If you can't call at all, then write us at  
Timberwolf Litigation and Research Services LLC  
402 North Wayne Street, Suite B, Angola, Indiana 46703

**You don't have to do it alone!.....Run with the Pack !**

attorneys, paralegals, researchers and consultants dedicated to serving your legal needs.



## Prison Bankers Cash In (cont.)

vert to electronic payments or how much revenue the company gains when they make the switch.

Inside JPay's secure, fishbowl-like money order processing room, reams of envelopes sit in postal bins on the shelves. Signs around the room remind the handful of workers employed there which states allow them to deduct a fee and which offer the service for free.

In Pennsylvania, the first state where JPay accepted money orders by mail, executives were surprised to see the number of money orders plunge by two-thirds in the first two months, Chief Financial Officer Mark Silverman explained in a brief interview.

Shapiro said that Missouri used to process 30,000 money orders a month before JPay came in.

"With JPay, we drove that down to only 1,000 people sending money," he says. "And that's by choice."

JPAY's marketing materials urge customers to choose the higher-cost option. During her twice-monthly visits to Bland, an isolated work camp nestled between rolling, green hills, Pat Taylor now sees JPay-branded fliers warning of the misery awaiting anyone who tries to use the "free option."

On one side, a multi-ethnic lineup of models bury their faces in their hands and complain of what a "nightmare" it was to complete the money order, how it got lost or delayed.

"There's a better way," the flier promises on the reverse side, which depicts an attractive young woman seated with her laptop computer. For "Faster, Easier, Next-Day Delivery," families can choose from a menu of high-fee options.

### Tequila, cigars and lobbying

TO IMPRESS STATE CORRECTIONS OFFICIALS and gain their business, JPay spends heavily on industry conventions attended by agency heads with contracting authority. During a 2012 convention of the American Correctional Association, the company threw what it called an "END OF THE WORLD PARTY" at a Denver wine bar that bills itself as "about you, and your inalienable right to the unbridled enjoyment of food and wine."

The invitation, printed on a disposable beer coaster, promised "a bash, JPay-style: \*fuerte\* tequila, hand-rolled cigars, a live mariachi band." Conventioneers could catch a JPay shuttle leaving from the hotel "ALL NIGHT LONG," it said.

For years, JPay has sponsored an award for former state corrections directors presented by the Association of State Correctional Administrators, paying for the recipient's trip and a Wexford crystal bowl inscribed with the honoree's name.

JPAY's outreach extends to state legislatures as well, even though many of the company's contracts forbid it from using fee revenue to lobby. The company has hired registered lobbyists in at least seven states. Shapiro says JPay's lawyers approved the use of company funds for that purpose.

In Ohio, it tapped Thomas Needles, a former aide to President George H. W. Bush. Needles gives generously to Republican candidates and also lobbies for for-profit universities. In Maryland, JPay hired Bruce Bereano, one of the state's best-paid lobbyists, who was disbarred after a 1994 conviction for overbilling his clients and using the money for campaign donations.

The company also sought to lobby Washington for access to the federal Bureau of Prisons' 216,000 prisoners—what Shapiro has called "the mother ship of all contracts," which is now held by Bank of America.

It spent \$20,000 in 2012 to hire Park Strategies, run by former U.S. Senator Alfonse D'Amato of New York, in an effort to obtain the contract. That effort was not successful.

### More prisoners, smaller budgets

JPAY WAS FOUNDED IN 2002, JUST AS THE U.S. prison population neared the apex of a three-decade climb that more than quadrupled the number of prisoners in state prisons. Shortly thereafter, as the economy went into recession, state budgets were squeezed and officials looked more aggressively for ways to cut spending on prisons.

Already, private vendors had stepped in with a solution: They would charge prisoners sky-high prices for phone services, snack foods, hygiene products and clothing, then return a large cut back to the prisons—often 40 percent or more.

Shapiro was the first entrepreneur to

## Support Prison Legal News with these beautiful gifts!

CALL **561-360-2523**, MAIL ORDER OR USE WEB FORM

[HTTP://WWW.PRISONLEGALNEWS.ORG/](http://www.prisonlegalnews.org/)



## Hand Embroidered Greeting Cards



Made by women prisoners in Cochabamba, Bolivia. Each card is individually made, no two are identical. The prisoners are paid a fair wage for each card and keep 100% of the pay to support themselves and their families. Local fair trade non-profits in Bolivia supply the materials for the cards. **\$6.**

**Hand Made Hemp Tote Bag** All natural hemp tote bag hand made in Vermont with the Prison Legal News logo on both sides, in red and black. Great for carrying books, groceries, and more! Stamped on the inside that no sweatshop, prison or child labor was used in its manufacture. **\$12.**

\$6 shipping and handling for orders under \$50.



see how financial services might provide another stream of revenue. For a fee, he offered to deliver cash in ways that saved time and effort for corrections agencies, and often to give them a portion of the proceeds, just as the phone and commissary companies were doing.

"When we started, the states were very much saying to us, 'There's no need for procurement here because there's no one else doing what you do,'" Shapiro said in a 2012 interview. Ten years later, he said, all of them were asking companies to submit bids for the work.

That doesn't mean the door is open to competitors. Most states, including Virginia, now contract with JPay or its main competitor under a master agreement negotiated by Nevada in 2011 on behalf of a multi-state consortium. Participating states can simply sign on to the deal with one or both of the companies without the hassle of separately determining the best company for the job.

JPay is protected from other market forces, as well. When states offer its music players and tablet computers for sale to prisoners, they often confiscate radios that

people already own, according to prisoners in Ohio. This leaves prisoners dependent on JPay's music downloads, which can cost 30 to 50 percent more than the same songs on iTunes, prisoners say.

The profit-sharing arrangements are at the core of JPay's origin story, Shapiro said in 2012. A couple of years out of college, he spent months driving around upstate New York, pitching JPay to "every sheriff, whether they had five inmates or 100 inmates"—without success.

Then someone in Passaic County, New Jersey suggested that they offer the county 10 percent of their revenue, "so the jail would be less of a tax burden on the community." The warden signed up on the spot.

Critics including Alex Friedmann, associate director of the Human Rights Defense Center, a prisoners' advocacy group, say the profit-sharing amounts to a legal kickback. "They charge exorbitant fees then kick back a percentage of their revenue.... The company doesn't need that for profit," Friedmann said.

Shapiro says he prefers the term "commission" because "the word kickback has a negative connotation, and it seems like

some person is making that money and pocketing it and buying a Chevrolet or something, when in fact it's going to use for the benefit of inmates—basketball hoops, volleyball, whatever."

Most states put their share of the cash in an "Inmate Welfare Fund" that is supposed to be used for prisoner benefits beyond what is guaranteed to them by law. As incarceration rates climbed, however, the definition of "inmate benefit" drifted, says Justin Jones, who was director of the Oklahoma Department of Corrections until last year.

"The Legislature allowed us to broaden the definition of inmate welfare and it got to the point, almost anything they would fund through appropriations could now be paid for as inmate welfare," he says. "It ended up where we started using that money if an inmate went out to medical on an emergency and medical was end-of-year short," he says. "We bought air conditioners, ice machines, X-ray machines."

Jones was not a fan of the system. If legislatures want to impose longer prison sentences or "if they create new crimes, then the legislature should appropriate dollars

## THE SENZA COLLECTION

SENZA SPECIALIZES IN PROVIDING YOU SEVERAL CHOICES  
ALL NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY  
- OR -

NON NUDE 4X6 PRINTS IN STARTLING VIVID COLOR IMAGERY  
WE HAVE DIVIDED OUR CATALOGS INTO THESE CATEGORIES:

CAUCASIAN/AFRICAN-AMERICAN/HISPANIC/ASIAN/MIXED HOTTIES

EACH PAGE OF OUR CATALOGS HAS 99 GLORIOUSLY SEDUCTIVE LADIES POSING JUST FOR YOUR ENJOYMENT.

OVER 250 CATALOGS TO COLLECT AT JUST \$2.50 PER CATALOG

HERE'S A LITTLE FREEBIE FROM SENZA TO YOU!!!

ORDER YOUR FREE SENZA "99 HOTTIES" SAMPLE CATALOG

JUST SEND US TWO U.S. FOREVER OR FIRST CLASS STAMPS AND A SELF ADDRESSED STAMPED ENVELOPE TO:

SENZA FREE CATALOG OFFER P.O. BOX 5840 BALTIMORE, MD 21282

AND FOR THOSE THAT JUST CANNOT WAIT...TAKE ADVANTAGE OF THIS LIMITED TIME OFFER

SENZA'S INTRODUCTORY SPECIAL \*\*\*\*\*DIRTY DOZEN\*\*\*\*\*

\$19.99 GETS YOU ALL THIS + FREE SHIPPING AND HANDLING

12 EYE POPPING CATALOGS! EACH CATALOG HAS 99 PICS TO CHOOSE FROM ON EACH PAGE  
PLUS

12 4X6 RANDOM PRINTS FROM OUR MIXED HOTTIES SELECTION TO SHOW OFF SENZA'S 4X6'S PRINT QUALITY.  
ALL FOR JUST \$19.99

REMEMBER YOU MUST: SPECIFY NUDE OR NON-NUDE ON YOUR ORDER

SPECIFY YOUR INSTITUTIONS RESTRICTIONS AS TO THE NUMBER OF PRINTS ALLOWED IN ONE ENVELOPE.

SENZA CORPORATE POLICIES - PLEASE REVIEW THEM CAREFULLY

ALL SENZA COLLECTION IMAGES ARE SOLD AT A FLAT PRICE OF 0.35 CENTS EACH.

ANYONE WISHING TO PURCHASE 1000+ PRINTS AT ONE TIME WILL BE GIVEN A FLAT PRICE OF 0.30 CENTS PER IMAGE.

SENZA HAS A MINIMUM ORDER REQUIREMENT OF: \$15.00 THIS DOESN'T INCLUDE S&H CHARGES.

SHIPPING AND HANDLING CHARGES ARE AS FOLLOWS:

1 - 5 4x6 PRINTS - \$1.00 PER ENVELOPE / 6 - 15 4x6 PRINTS - \$1.50 PER ENVELOPE

16 - 25 4x6 PRINTS - \$2.00 PER ENVELOPE

YOU MUST NOTIFY SENZA ON THE ORDER FORM,

THE MAXIMUM NUMBER OF PRINTS YOUR INSTITUTION WILL PERMIT IN EACH ENVELOPE

SENZA WILL ACCEPT BRAND NEW U.S. FIRST CLASS POSTAGE STAMPS AT THE RATE OF \$5.00

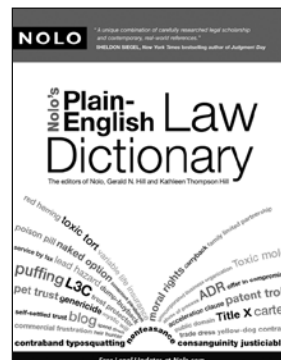
FOR EACH BRAND NEW FLAT BOOK OF 20 STAMPS.

YOU ARE REQUIRED TO KNOW YOUR INSTITUTIONS POLICIES REGARDING WHAT IMAGES ARE ACCEPTABLE INTO YOUR FACILITY INSTITUTION.

THERE ARE NO EXCEPTIONS TO THIS POLICY. RETURNED/REJECTED MAIL - YOU WILL HAVE 15 BUSINESS DAYS TO SEND US A SASE  
(3 STAMPS PER 25 REJECTED PHOTOS) WITH A STREET ADDRESS IN WHICH TO MAIL YOUR RETURNED/REJECTED PRINTS.

AFTER 15 DAYS THE PRINTS ARE RETURNED TO OUR INVENTORY.

ALL SALES ARE FINAL/NO REFUNDS OR EXCHANGES



## Nolo's Plain-English Law Dictionary

\$29.99

Order from

**Prison Legal News**

P.O. Box 1151

Lake Worth, FL 33460

561-360-2523

Add \$6 shipping for orders under \$50

[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

## Prison Bankers Cash In (cont.)

for that,” he says. “I should not have to go in and redefine and stretch the definition of inmate welfare accounts.”

### Double dipping

TAKEN TOGETHER, JPay and other prison vendors create a system in which families are paying to send the money, and prisoners are paying again to spend it, says Keith Miller, who is serving 21½ years at Bland for a series of drug-related, violent crimes committed in his early 20s. The earliest he may be released is 2021, when his mother will be 87 years old.

“The fact that [my mother] has to pay the fees to send the money and then the fact that [prison agencies] make a certain cut off it seems to me that [the prisons are] double-dipping into the money they’re sending,” he said in an interview at the prison. “It really doesn’t make sense to me that this should be allowed.”

Shapiro is skeptical that JPay’s fees make much of a difference for prisoners’ families. He says companies that provide other services to prisoners, such as phones and commissary, are the real problem.

“Compared to the commissary or phone revenue, we’re just a drop in the bucket,” he says.

That may be changing.

Last year, the Federal Communications Commission dusted off a 12-year-old petition filed by prisoners’ families who argued that prison phone rates were unfairly high, preventing them from maintaining contact with loved ones. The Commission capped rates for many calls under its authority to ensure that pay-phone rates are just, fair

and reasonable.

Mignon Clyburn, who was acting chairwoman of the FCC when it passed the rate cap and now serves as one of three commissioners, says the action was necessary because people are “making unspeakable sacrifices to stay in touch with their loved ones.”

Vincent Townsend, president of Pay-Tel Communications, a major provider of phones for prisoners, said his industry “abused the public.”

### “Ethical, right, moral”

OTHER PRISON VENDORS “BETTER PAY attention to what’s ethical, right, moral,” he said. “Because if you don’t then some regulator’s going to step in, and you’re going to have to deal with it.”

There is a crucial difference: The telephone industry is closely regulated by the FCC, which has explicit authority to set rates for pay-phone calls. Financial and consumer protection regulators have less power over pricing.

The Consumer Financial Protection Bureau can sue companies for offering unfair, deceptive or abusive financial services. The bureau declined more than a dozen requests to discuss specific issues related to prison financial services.

The Federal Trade Commission, which has consumer-protection authority and the power to ensure that markets are competitive, declined to comment “on specific companies or conduct.”

Regulators in seven states have levied fines totaling \$408,500 against JPay for operating without a license. [E.g., see article in this issue of *PLN*]. The actions were not designed to disrupt its business, according to the Conference of State Bank Supervisors, a trade group that represents these

regulators in Washington.

“State banking regulators are concerned with ensuring that businesses operating in their states are properly licensed and with enforcing applicable laws (including consumer protection laws),” the group’s spokeswoman said in an emailed statement.

### “Invent a better way”

SHAPIRO SAYS HE UNDERSTANDS THE challenges faced by poor families of prisoners since JPay’s startup days, when he would spend “hours on the phone with a grandmother, talking about her day at Wal-Mart.”

He says he feels trapped by the structure of the industry he has come to dominate. He wishes the fees were lower, that states didn’t force him to charge more and give them a share and that he could “invent a better way” than asking people’s families to help pay for their imprisonment.

Yet Shapiro says he is satisfied to compete within what he admits is a broken system, even if the system may be punishing some innocent family members.

For many families, JPay has become that system. When Jewel Miller, 80, phoned JPay’s call center last month to ask why her payments are delayed, and why she must submit the same form every time she sends a money order to Keith, the operator hung up on her.

In a series of interviews it became clear that Shapiro was unaware of some of the fees related to his business. He said he did not know, for example, that Florida now charges its own fee for money order deposits after JPay processes the payments.

These fees are spelled out in JPay’s contracts with states, which Shapiro signed. Florida’s says it will charge a 50-cent “Money Order by Mail” fee.

## AFFORDABLE INMATE CALLING SERVICES

*Keeping you Connected while saving you Money!*

**NO hidden fees. One flat monthly rate • NO setup fee with referral information  
NO charges to add/ remove numbers • NO transfer fees • 100% BOP Compliant!**

**Additional holiday minutes, no extra charge.**

**2 vanity numbers for \$15 + tax /month, additional # for \$1.50 each**

**Ask us about our REFERRAL PROGRAM!**

**Contact Us:**

**Inmates: inmates@aicsllc.net • 303-214-0097**

**Families: www.aicsllc.net • billing@aicsllc.net • 866-645-9593**



As of July, Shapiro was unaware of JPay's own \$1.95 fee to deposit money orders in Indiana, declaring, "If someone sends \$100 with a money order to an Indiana inmate, that inmate gets \$100.... I am positive."

Two days later, he called back to say, "We're working with the states right now to get some of those fees taken off."

So far, the fees remain in place. [Ed. Note: On November 12, 2014, The Center for Public Integrity reported that JPay had "eliminated fees for sending money orders to inmates in three states, creating a free deposit option for families of more than 100,000 people incarcerated in Indiana, Ohio and Oklahoma"].

## Part II: Megabanks have Prison Financial Services Market Locked Up

ON WALL STREET, BANK OF AMERICA plays a perpetual second fiddle to JPMorgan Chase & Co., the only U.S. bank that holds more assets.

A few blocks north, however, at the New York Metropolitan Correctional Center, there exists a market that Bank of

America has locked down, literally. For the 790 federal prisoners incarcerated at MCC, Bank of America controls the provision of money transfers, e-messaging and some telephone services.

The bank's monopoly extends across the federal Bureau of Prisons system—121 institutions housing 214,365 prisoners. Since 2000, Bank of America has collected at least \$76.3 million for its work on the program.

When prisoners are released, JPMorgan steps in, issuing high-fee payment cards to distribute money from their prison accounts, which include earnings from jobs and money their families send them.

The banks' exclusive deals came not from the Bureau of Prisons, but from the U.S. Department of the Treasury.

The agency awarded the contracts using a 150-year-old authority that allows it to sidestep the oversight, transparency and competition typically required for federal contracting. That means that for 14 years, Bank of America has never been required to compete with other vendors who might do the work better or for less money, according to Treasury documents obtained under the

Freedom of Information Act.

JPMorgan's no-bid deal to issue debit cards for various federal agencies began in 1998, was extended in 2008 and eventually expanded to include cards for federal prisons. Fees from former prisoners make up most of the bank's compensation for these cards, documents show. A separate Treasury document from 2013 said that about 50,000 released prisoners had been issued cards and listed fees of \$2.00 for withdrawing money from an ATM and \$1.50 for leaving an account inactive for three months.

JPMorgan, Treasury and the Bureau of Prisons declined to provide a current fee schedule for the cards. Bank of America, JPMorgan and the Bureau of Prisons all declined numerous requests to discuss the banks' deals inside U.S. prisons.

The documents show how Treasury has expanded the scope of Bank of America's contract—originally focused on managing accounts for prisoners and tracking inventory at prison stores—to include an array of services for the nation's largest prison system, from providing e-messaging to supplying the prison system with handheld scanners. The deal allows Bank of America

# 200 PEN PALS

**NO JOKE - NOT A SCAM**

Direct from Girls and Mags

**200 Pen Pal Ads Only \$19.98**

**15% with Photos. Approximately  
50% USA 50% Overseas**

**No two lists are the same**

**FREE SHIPPING**

**RUSH \$19.98 To:**

**GIRLS and MAGS**

**3308 Rte. 940, Ste. 104-3018**

**Mt. Pocono, PA 18344**

**INMATE SHOPPER MISSION, TX ADDRESS CLOSED**

**msp** | LAW



**Michael Soukup**  
Licensed in Wisconsin and Illinois

**Matthew Pinix\***  
Licensed in Wisconsin

## Appealing a Conviction? Hire an Appellate Attorney.

You wouldn't hire a **heart surgeon** to perform **brain surgery**. Don't hire a **trial attorney** to handle **your appeal**. Hire someone who focuses on **criminal appeals**.

Hire the **Law Office of Matthew S. Pinix**, attorneys with more than 10-years' combined experience handling **criminal appeals** in **Wisconsin** and **Illinois**.

**Law Office of Matthew S. Pinix, LLC**  
1200 East Capitol Drive, Suite 220  
Milwaukee, Wisconsin 53211  
(414) 963-6164  
[www.pinixlawoffice.com](http://www.pinixlawoffice.com)

- » Rated by Super Lawyers®
- » Rated by avvo.com
- » Better Business Bureau accredited

## Prison Bankers Cash In (cont.)

to subcontract with other prison vendors, positioning it as a hub of prison services that are procured outside any government bidding process.

The contract has been amended 22 times in the past 14 years.

### Lubricating the system

ACROSS THE COUNTRY, JAILS AND PRISONS are hungry for ways to shift their operational costs onto prisoners and their families. Prisoners need money to pay for essentials like toiletries and court fines as well as extras like higher-quality food than what is served in prison cafeterias. Their families often pay high fees to send them the money. Prisoners, in turn, pay marked-up prices for items sold at prison stores.

The oil that lubricates this entire system is supplied by the prison bankers, vendors that collect all the prisoners' money in a pipeline of cash from which payments and fees can be pulled. Bank of America's lock on federal prisons makes it a major player among prison bankers, many of

which provide a range of high-cost financial services to prisoners and their families and share their profits with the prison systems they work for.

Providing services inside prisons is a growing business, but it's not new. The first accounts for federal prisoners were set up in 1930. Prisoners' families could no longer bring them food and clothing, the government decided, but instead would be allowed to send money into individual accounts. Until the early 2000s, most deposits were made by mail using postal money orders, a process that was nearly cost-free. Before Bank of America's contract, the Treasury Department held prisoners' funds.

Bank of America's prison contract is an example of how the Treasury Department leans on a power granted during the Civil War to pick and choose its own bankers and allow other agencies to avoid procurement rules that might force a competitive bidding process.

By hiding these deals from the public, Treasury "invites opportunities for waste and fraud," said Neil Barofsky, who provided independent oversight of Treasury's \$700 billion bailout program after the 2008 financial crisis. He said Treasury's expansive use of the authority reminds him of what he saw while working with the agency.

"The reaction from Treasury when dealing with banks was to find a way to say no to being transparent," said Barofsky, now a partner with the law firm Jenner & Block LLP.

Treasury's power to award the deals, known as financial agency agreements, was created in 1863 to support the nation's first national banking system, around the time the greenback was introduced. Since then, the department's broad use of this power has drawn criticism from lawmakers, auditors with the Government Accountability Office, federal appeals court judges and the department's own inspector general. Treasury has said the selection process is competitive enough and the contracts are handled responsibly.

In a 1975 report, however, government auditors said Treasury was reimbursing banks operating on overseas military bases for office parties and club dues, leaving them with "little or no incentive to operate the facilities profitably or efficiently."

Twenty years later, the U.S. Court of Appeals for the District of Columbia overturned Treasury's selection of Citibank as a

financial agent to deliver electronic benefits like Social Security, calling it "arbitrary."

And in 2008, the Government Accountability Office said a deal with JPMorgan to provide stored value cards on Navy ships was "at risk of delivering a system solution that falls short of cost, schedule and performance expectations."

Most recently, Treasury's inspector general last spring criticized oversight of a program to deliver federal benefits on debit cards issued by Dallas-based Comerica Bank. The inspector general found that officials had failed to keep tabs on fees charged to consumers and did not justify the decision to pay Comerica an extra \$32.5 million for work it had promised to do for free. Treasury agreed to rebid the deal, then quietly extended its partnership with Comerica for five years.

### Twenty-two amendments, no bidding

TREASURY HAS SPENT MORE THAN \$5 BILLION in the past decade on financial agency agreements with a handful of banks, often without considering whether another company could do the work cheaper or more effectively, documents show.

Consider how Bank of America's prison deal has swelled in the 14 years since it was awarded.

The original contract to hold and manage prisoners' accounts and track their purchases from prison stores, worth up to \$14.4 million, was amended six months later, adding up to another \$1.47 million to Bank of America's compensation. In 2003, officials added telephone service to the deal, boosting the bank's potential compensation to \$25.8 million. Later, the work grew to include e-messaging for prisoners.

Bank of America's contract has been amended 22 times since 2000 and the cost has swollen more than fivefold to \$76.3 million, Treasury officials say. They say the Department of Justice, the parent agency of the Bureau of Prisons, has reimbursed Treasury for those costs.

The contracts say these services might help the Bureau of Prisons reduce staff time spent opening letters or entering account deposits manually. Yet they never articulate why the work could not be procured directly by the Department of Justice using typical contracting procedures.

Bank of America and Treasury designated two subcontractors to perform the

#### NEW UPDATE 2014 Edition

### "WINNING HABEAS CORPUS & POST CONVICTION RELIEF"

Attorney Kent Russell writes: "Now that I've been turned on to Winning Habeas Corpus, I always make sure that it's close at hand."

Write briefs direct from book, actual quotes of text Not headnotes! Supreme Court up to Missouri v Frye 132 S.Ct. 1399 (2012); 625 pages plus

- ⇒ Ineffective Assistance of Counsel
- ⇒ Habeas Corpus Practice, AEDPA
- ⇒ Major constitutional issues, 4th, 5th & 6th Amendments
- ⇒ Plea bargain process
- ⇒ Sentencing errors
- ⇒ Equitable Tolling
- ⇒ Actual innocence, Exhaustion
- ⇒ Closing Argument & Jury Instructions
- ⇒ Parole, Immigration
- ⇒ Attorney advice, conflict, research



**Prisoner Price: \$58.50** (s/h incl.)

To: **FAST LAW PUBLISHING, Assoc.**

Box 577, Upland CA 91785

Or On-line: [www.fastlaw.org](http://www.fastlaw.org)



work: DynCorp International, a major military contractor based just outside of Washington, and Advanced Technologies Group, a Kansas-based technology company that today shares a parent company with Keefe, the biggest operator of prison commissaries.

Neither company would have been eligible to deal directly with Treasury because financial agents must be banks or credit unions that are insured by the federal government.

### Mother ship of contracts

THE BANK'S POWER TO CHOOSE WHICH vendors provide money transfers and technology partners has rankled potential competitors including Ryan Shapiro, founder and CEO of JPay Inc., which provides prison banking services to most state prisoners. He has called Bank of America's deal "the mother ship of all contracts."

Shapiro spent years trying to break through the Bank of America stronghold and offer money transfers to federal prisons—a role explicitly reserved for Western Union and others chosen by Bank of America under the bank's contracts with Treasury. He spent heavily on lobbying and involved his congresswoman, U.S. Rep. Debbie Wasserman Schultz, D-Fla., whose political action committee had received a \$5,000 contribution from Shapiro in 2010. Still, he was unable to open the bidding process.

"They hand-pick the vendor," Shapiro said in 2012. "It's a veiled way of basically just knighting the company you want."

The Center for Public Integrity ob-

tained contracts that covered the beginning of Bank of America's deal through mid-2012 through a Freedom of Information Act request. Both Treasury and the Justice Department failed to fulfill more recent requests for records detailing more recent changes to the program.

Bank of America's role in the system is well hidden, says Jack Donson, a private prison consultant who spent 23 years working for the Bureau of Prisons. He was surprised to learn that Bank of America chooses the subcontractors and ultimately is responsible for systems that he dealt with on a daily basis before he left the agency in 2011.

Programs like those operated by Bank of America don't always deliver the efficiency they promise, Donson said, because they add a new layer of bureaucracy. "Now the profit is going to two places," he says. "The profits should not go out to the private sector; it should remain within the agency."

### Trust fund department

THE BUREAU OF PRISONS HAS CREATED A new office to manage prisoner services like accounts and e-messaging since the vendors came in, Donson says. When he started in the 1980s, a prison's inmate finance office was run by one or two people. Today there's a whole Trust Fund Department. "People have to bid out those contracts, then people have to track those contracts," Donson said.

The money prisoners spend on email and goods from prison stores is plowed back into a so-called inmate welfare fund

that is supposed to be used for extra programs to benefit prisoners. Yet in the federal system in 2010, more than 75 percent of that money went to prisoner wages. About one-half of one percent of the money was spent on psychological programs. Nineteen percent went to recreational activities.

Donson said he was not surprised that money earmarked for programs to benefit prisoners actually pays for staffing and other costs.

By working with Treasury and Bank of America, the Bureau of Prisons has kept its preferred vendors in place without competition for nearly 15 years, something it could never do under normal contracting rules.

Those rules were designed to prevent agencies from favoring certain contractors and abusing their discretion, said Kathleen Clark, a professor at the Washington University School of Law who studies government ethics. Treasury's broad use of its authority presents "a risk to fairness," she said.

"It's hard for me to understand what the justification is for circumventing these rules," Clark said, "other than it's convenient and it's easier." ■

*This article was published by The Center for Public Integrity ([www.publicintegrity.org](http://www.publicintegrity.org)), a nonprofit, nonpartisan investigative news organization in Washington, D.C., in a two-part series on September 30, 2014 and October 2, 2014. Prison Legal News provided research assistance to the author. Copyright 2014 The Center for Public Integrity; reprinted with permission, with minor edits.*



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription! Quarterly drawing WINS \$100! (Void in New York) (Last Quarter's winner from Somers, CT.) TELL YOUR FRIENDS! ACT NOW!!

PO Box 2063 • Fort Walton Beach FL. 32549  
[www.InmateMagazineService.com](http://www.InmateMagazineService.com)

## Inmate Magazine Service



# Report Spurs Investigation of Bank of America, JPMorgan Prison Deals

*Government auditors are investigating exclusive contracts held by Bank of America Corp. and JPMorgan Chase & Co. to provide financial services inside federal prisons.*

*by Daniel Wagner*

**T**HE U.S. DEPARTMENT OF THE TREASURY's inspector general, Eric Thorson, will audit Treasury's "awarding and administration" of the contracts with Bank of America and JPMorgan "in response to recent media reports concerning the selection of and high fees charged by these two financial agents," the watchdog's general counsel, Rich Delmar, told The Center for Public Integrity.

The Center first reported in October 2014 that the banks have exclusive access to the more than 214,000 federal prisoners under contracts awarded by the U.S. Treasury Department about 15 years ago. The deals, called financial agency agreements, lack the competitive bidding or transparency requirements for most federal contracts.

Bank of America has been paid at least \$76.3 million by Treasury to manage prisoners' accounts, money transfers, email service and other technology inside the 121 facilities managed by the federal Bureau of Prisons. The contract has been amended 22 times since it was awarded without competitive bidding in 2000.

The accounts hold the money prisoners earn from prison jobs paying as little as 12 cents an hour and supplemental funds sent by family and friends. Prisoners use the money for clothing, phone calls, food and other expenses.

Treasury says the payments to Bank of America were reimbursed by the Department of Justice, the Bureau of Prisons' parent agency.

JPMorgan issues debit cards to prisoners when they are released that contain the balance remaining in their prison accounts. JPMorgan's original contract was awarded in 1998 and amended at least 14 times. It was re-upped in 2008 and amended at least four times since then.

It is unclear how much money JPMorgan has made on the cards because the bank's compensation comes from fees charged directly to former prisoners. A separate Treasury document from 2013 said that about 50,000 released prisoners had been issued cards and listed fees of \$2 for withdrawing money from an ATM and \$1.50 for leaving an account inactive for three months.

JPMorgan, the Bureau of Prisons and Treasury declined to provide a current list of fees charged to former prisoners.

"As always, the Treasury Department will support the inspector general's review of this program," an agency spokesman said. JPMorgan and Bank of America declined to comment on the probe.

Delmar said the investigation was launched on October 3, 2014, a day after The Center for Public Integrity published a report on the contracts.

Bank of America's deal also drew questions from Capitol Hill. In a letter to

Treasury Secretary Jacob Lew sent on October 3, U.S. Senator Charles Grassley, R-Iowa, asked how Treasury can protect taxpayers from fraud and conflicts of interest if the agency sidesteps the oversight, transparency and competition typically required in federal contracting.

Grassley applauded the probe, calling it "just the kind of job inspectors general are set up to do—to take an independent look at whether the government is getting the best deal for taxpayers."

In his letter, Grassley asked Treasury to detail all payments by Treasury and Justice to Bank of America or its subcontractors. He also asked Treasury to disclose the 22 amendments, only 17 of which were provided to The Center under a Freedom of Information Act request.

Grassley is the senior Republican on the Senate Judiciary Committee, which oversees the Justice Department.

The audit may expand to encompass other financial agency agreements, a sign that Treasury's inspector general is broadening his scrutiny of the deals. In an audit this spring, Thorson criticized an unrelated financial agency agreement with Dallas-based Comerica Bank. Treasury paid Comerica an extra \$32.5 million for work the bank had promised to do for free, the audit found.

Treasury has spent more than \$5 billion in the past decade on financial agency agreements, often with the same handful of banks, documents show. ■

*This article was published by The Center for Public Integrity ([www.publicintegrity.org](http://www.publicintegrity.org)) on October 15, 2014; it is reprinted with permission, with minor edits.*

**FREE  
30  
Minute  
Trial  
Offer**

**PLUS  
100  
Minute  
Signup  
BONUS**

**200  
Minute  
Referral  
Bonus**

**...call them for me  
at 888-828-8168 and  
they'll cut the cost  
of my phone calls  
from this place...**

**NO Monthly Fees!!!  
NO Activation Fees!!!**

**Rates down  
to 3¢ per  
minute**

**Helping  
Fed, State  
and Local  
Inmates  
Save \$\$\$**

**CallsFromWalls**  
PO Box 459  
New Milford, NJ 07646  
[info@callsfromwalls.com](mailto:info@callsfromwalls.com)

**got pen pals?** *get some*

**PRISON INMATES ONLINE #PLN AD**

**Send SASE to:** 8033 W Sunset Blvd #7000  
Los Angeles CA 90046

**for free brochure.**

# PLN FUNDRAISER 2014



*Please Support Prison Legal News  
and the  
Human Rights Defense Center!*



Prison Legal News, a project of the non-profit Human Rights Defense Center (HRDC), cannot fund its operations through subscriptions and book sales alone. We rely on donations from our readers and supporters – like you!

PLN conducts just one fundraiser a year; we don't bombard our readers with donation requests, we only ask that if you are able to contribute something to our important work, please do so. Every dollar counts and is greatly appreciated and will be put to good use. No donation is too small, even books of stamps!

## Where does your donation go? Here's some of what we've done in the past year:

- HRDC, a co-founder and leader of the Campaign for Prison Phone Justice, was instrumental in getting the Federal Communications Commission to reduce the cost of prison phone calls, which the FCC did when caps on interstate prison phone rates went into effect in February 2014!
- PLN settled censorship suits against jails in Ventura County, California; Upshur and Comal County, Texas; and Kenosha County, Wisconsin. In all of those cases, the jails agreed to change their mail policies to allow prisoners to receive PLN and other correspondence.
- PLN has other censorship lawsuits pending against the Nevada DOC, the Florida DOC and jails in Texas, Tennessee, Virginia, Arizona, Michigan, Georgia and Florida.
- HRDC settled a wrongful death suit brought by the family of a Washington state prisoner who died due to inadequate medical care, and settled a lawsuit filed on behalf of a former prisoner who lost her baby after guards at a CCA-run jail in Tennessee delayed sending her to a hospital.

## With your help we can do more! Please send your donation to:

**Prison Legal News, P.O. Box 1151, Lake Worth, FL 33460**

Or call PLN's office at 561-360-2523 and use your credit card to donate.

Or visit PLN's website at [www.prisonlegalnews.org](http://www.prisonlegalnews.org) and click on the "Donate" link.

## PLN Support Gifts

### Gift option 1

As a token of our gratitude for your support, we are providing the PLN card when making a donation of \$50. The card is hand embroidered by women prisoners in Bolivia who are paid a fair wage for the cards to help support their families.



### Gift option 2

In recognition of your support, we are providing the PLN hemp tote bag when making a donation of at least \$75. Handmade in Vermont using hemp fiber. Carry books and groceries stylishly and help end the war on drugs!



### Gift option 3

To show our appreciation for your support, we are providing the following selection of books for you to choose from when making a donation of \$100. Donations of \$100 or more can choose one free title. Each \$100 donation entitles you to another free title; i.e., donate \$500 and you get five books! \$1,000 and you get everything on the page! Please circle the books you want and send the corresponding donation amount.



### Gift option 4

As a thank you gift for your support, we are providing the entire PLN anthology of critically acclaimed books on mass imprisonment signed by editor Paul Wright! (The Celling of Amercia, Prison Nation and Prison Profiteers) plus the PLN hemp tote bag to carry the books in when making a donation of \$250 or more.



## JPay Fined in Pennsylvania, Michigan for Operating without a License

AS INDICATED IN THIS ISSUE'S COVER story, JPay, a company incorporated in Delaware and based in Miami, Florida, and the industry leader in prison money transfer services, has been fined \$408,500 for operating without a license in at least seven states – including Pennsylvania and Michigan.

JPay allows consumers to transfer money by using credit and debit cards through its website and by phone, through cash transfers with cash agent locations that contract with JPay, and by mailing money orders to the company. JPay charges consumers a fee for most money transfers.

The company's contract with the Pennsylvania Department of Corrections specifies it is the sole provider of electronic fund services for state prisoners.

In August 2011, the Pennsylvania Department of Banking (PDB) concluded an investigation that found JPay had not been licensed as a money transmitter as required by the state's Money Transmitter Act, 7 P.S. §§ 6101-6018. Yet the company had been transferring money from Pennsylvania citizens to prisoners since December 2004.

The PDB found that JPay did not meet any of the Act's exemptions; during the investigation, the company was cooperative and provided information and documents to the PDB in a timely manner. Since JPay commenced business in the state, the PDB had received only one consumer complaint concerning the company.

On December 16, 2011, the PDB and JPay entered into a consent decree that required the company to pay an \$80,000 fine for violating state law by operating without a license. In return, the PDB granted JPay a license as its part of the agreement. See: *Commonwealth of Pennsylvania Department of Banking, Bureau of Compliance and Licensing v. JPay*, Commonwealth of Pennsylvania, Department of Banking, Docket No. 11-0197.

In Michigan, JPay was found to be operating without a license as required by the state's Money Transmission Services Act, MCL 487.1011(1), even though it provided money transfer services through its contract with the state's prison system.

In November 2012, the company and

the Michigan Department of Licensing and Regulatory Affairs entered into a consent order and stipulation. JPay agreed to pay a \$152,500 fine, and the Office of Financial and Insurance Regulation agreed to "present and recommend ... approval" of the company's application for a license. See: *In the Matter of JPay, Inc.*,

Michigan Department of Licensing and Regulatory Affairs, Enforcement Case No. 12-11449.

In addition to regulatory fines, JPay has also been sued a handful of times, including 7 times in federal court – most recently in October 2014. All of the cases, filed by pro se prisoners, have been dismissed. ■

### ***The Best 500 Nonprofit Organizations for Prisoners and Their Families (2<sup>nd</sup> Ed.),*** **edited by George Kayer** **(CreateSpace Independent Publishing,** **July 2014). 130 pages, \$18.99**

*Book review by Gary Hunter*

HELP! FOR PRISONERS AND THEIR families, "help" is a word that's all too familiar. And while many share problems that are similar, each situation is unique. Sometimes the problem is legal, other times it's domestic and sometimes the problem is just identifying the problem itself. *The Best 500 Nonprofit Organizations for Prisoners and Their Families* is a book that helps to handle issues related to or resulting from incarceration.

Putting people in prison often creates more problems than it solves. While legal issues are the most obvious concern faced by prisoners and their families, they are only a small part of a much larger picture. *The Best 500 Nonprofit Organizations* provides information about a wide range of resources available to assist both prisoners and their family members.

Most people are familiar with the American Civil Liberties Union and how the ACLU helps to protect citizens' constitutional rights, including those of prisoners. But few know about organizations dedicated to lesbian, gay and transgender issues; domestic violence issues; finding pen pals; and providing assistance with reentry and post-release job placement. This book identifies such resources and many more.

Looking for legal help? *The Best 500 Nonprofit Organizations* provides information on topics as specific as the death

penalty and actual innocence to holistic resources like Prison Legal News. Whether you need to connect with organizations that deal with disability benefits or educational programs, or simply want to buy a gift for someone you care about, *The Best 500 Nonprofit Organizations* includes over 800 listings.

Speak only Spanish? No problem. *The Best 500 Nonprofit Organizations* has a Spanish section, too. This complete resource guide is categorized by subject and organization to make it easy to find the help you need, quickly and efficiently. You won't find a more exhaustive collection of useful organizations that cater to prisoners and their families.

For the past 24 years, PLN has provided its readers with details on almost every source included in *The Best 500 Nonprofit Organizations*. But nowhere else is this list available in one complete directory, brought to you in such an easy-to-read format. Whether you're just entering the prison system or just getting out, or somewhere in between, you can ease the burden of incarceration with this excellent resource book.

*The Best 500 Nonprofit Organizations for Prisoners and Their Families* is available on Amazon.com and from Inmate Shopper, P.O. Box 533, North Dighton, MA 02764, 888-712-2993, [www.inmateshopper.com](http://www.inmateshopper.com) (price includes shipping). ■



# States Renewing Their Prison Phone Contracts

*As state DOCs renew or rebid their prison phone contracts, you can help urge them to lower intrastate phone rates and eliminate commission kickbacks!*

*The Campaign for Prison Phone Justice needs your help in:*

**\*\*\*\* Oklahoma, Washington, Montana \*\*\*\***

The Departments of Corrections in the above states are in the process of re-bidding or renewing their prison phone contracts. Most DOCs receive a commission (kickback) on revenue generated from calls made by prisoners, which results in excessively high phone rates. Although the FCC voted last year to cap the costs of interstate (long distance) prison calls, which went into effect on February 11, 2014, the order does not apply to intrastate (in-state) calls. An estimated 85% of prison phone calls are in-state. This is an opportunity to ask DOCs to forgo commissions and ensure their new prison phone contracts are based on the lowest cost to those who pay for the calls – mostly prisoners' families.

## **Take Action NOW! Here's What YOU Can Do!**

Ask your family members and friends to write, email, call and fax the DOC and the governor's office (addresses and contacts are listed below), requesting that the DOC: 1) forgo commission payments when re-bidding or renewing its prison phone contract, and 2) base the new contract on the lowest calling costs. Lower prison phone rates should apply not just to long distance calls but also to in-state calls. For a sample letter or to easily send an email, visit the Campaign for Prison Phone Justice's website and click on the "Take Action" tab:

**[www.phonejustice.org](http://www.phonejustice.org)**

### **Prison phone contract information & Contacts:**

**Oklahoma:** Receives an effective kickback of 76.6%; existing contract expires 12-31-2014. Charges \$3.00 for a 15-minute collect intrastate call and \$3.00 for a local call. **Contacts:** Oklahoma DOC, Director Robert Patton, 3400 Martin Luther King Ave., Oklahoma City, OK 73111; phone: 405-425-2505, fax: 405-425-2578, email: [terri.watkins@doc.state.ok.us](mailto:terri.watkins@doc.state.ok.us). Governor Mary Fallin, Capitol Building, 2300 N. Lincoln Blvd. Rm. 212, Oklahoma City, OK 73105; phone: 405-521-2342, fax: 405-521-3353, email: [www.ok.gov/governor/#](http://www.ok.gov/governor/#) (click "E-mail Governor Fallin" under the "Contact the Governor" tab).

**Washington:** Receives a 51% kickback; existing contract expires on 12-31-2014. Charges \$3.50 for a 15-minute collect intrastate call and \$3.50 for a collect local call. **Contacts:** Washington DOC, Secretary Bernard Warner, P.O. Box 41100, Mail Stop 41100, Olympia, WA 98504-1100; phone: 360-725-8213, fax: 360-664-4056, email: [doccorrespondenceunit@doc.wa.gov](mailto:doccorrespondenceunit@doc.wa.gov). Governor Jay Inslee, P.O. Box 40002, Olympia, WA 98504-0002; phone: 360-902-4111, fax: 360-753-4110, email: <https://fortress.wa.gov/es/governor> (use online email form).

**Montana:** Receives a 25% kickback (\$23,000/month guaranteed); existing contract expires on 1-31-2015. Charges \$2.04 for a 15-minute collect intrastate call. **Contacts:** Montana DOC, Director Mike Batista, 5 S. Last Chance Gulch, P.O. Box 201301, Helena, MT 59620; phone: 406-444-3930, fax: 406-444-4920, email: [jlamoure@mt.gov](mailto:jlamoure@mt.gov). Governor Steve Bullock, Office of the Governor, P.O. Box 200801, Helena, MT 59620-0801; phone: 855-318-1330 or 406-444-3111, fax: 406-444-5529, email: <http://governor.mt.gov/Home/Contact/shareopinion.aspx> (use online email form).

# From the Editor

by Paul Wright

**W**ELCOME TO THE LAST ISSUE OF *PRISON Legal News* for 2014. By now, all *PLN* subscribers should have received our annual fundraiser letter, which includes our last annual report. If you have not yet made a donation, please do so. Unlike many other non-profit organizations, we do not constantly bombard our supporters with pleas for money throughout the year, which in itself costs money. We only do a fundraiser mailing once per year.

As 2014 comes to a close, our Prison Phone Justice Campaign is moving into high gear as we ask the Federal Communications Commission to cap the cost of intrastate (in-state) prison and jail phone calls. We urgently need your financial support to keep the pressure on the telecom companies and prisons and jails alike. We have devoted extensive resources and staff time over the past 4 years to this issue, and more is needed. We also need you to contact the FCC and tell them the time has come to cap the cost of intrastate prison and jail calls; see the ad on p. 2.

Even if you cannot afford a donation, please encourage others to donate to the Human Rights Defense Center and *Prison Legal News* to support the work we do on behalf of prisoners and their families. Some of that work is ground-breaking journalism on criminal justice issues, such as our cover story in this issue of *PLN* on JPay and how the company gouges prisoners and their families by paying prison and jail officials kickbacks in exchange for monopoly contracts that only allow prisoners to receive money via JPay. *PLN* worked extensively with the author on this story, and we continue to push on other critical, cutting-edge issues that are largely ignored by the commercial media but which affect prisoners.

Among other services that *PLN* offers is our free daily news email list. Every weekday we send email list subscribers a digest of 6-10 stories culled from across the Internet that deal with criminal justice reform and prison-related issues. You can sign up for free on our website at: [www.prisonlegalnews.org/subscribe/email](http://www.prisonlegalnews.org/subscribe/email).

Our new site has many additional features it did not have in the past, including multimedia and photo galleries. Plus

it contains all back issues of *PLN* (to May 1990), a huge brief bank and publications library, and over 27,000 articles related to prisons and jails. Check it out at: [www.prisonlegalnews.org](http://www.prisonlegalnews.org).

We also have a website for *PLN*'s parent organization, the Human Rights Defense Center, [www.humanrightsdensecenter.org](http://www.humanrightsdensecenter.org), and we maintain a site with the prison telephone contracts for all 50 states, the BOP and many jails around the country, as well as information on phone tariffs, litigation, legislative and regulatory actions, and much more: [www.prisonphonejustice.org](http://www.prisonphonejustice.org).

We look forward to a new year of struggle and hopefully some positive change for prisoners and those enmeshed in the criminal justice system. If you can make a donation or encourage others to make one on your behalf, please do so; you can donate online to support our advocacy work, too. Also, books from *PLN*'s book store make great gifts, and this is the last month we are offering our Subscription Madness promotion – see the ad on p.49.

Enjoy this issue of *PLN*, and everyone at *PLN* and HRDC wishes our readers and supporters a happy holiday season and hope for a more militant new year. 🍀

## Washington Ad Seg Prisoner Improperly Denied Earned Time

by Mark Wilson

**O**N DECEMBER 30, 2013, THE WASHINGTON State Court of Appeals held that prison officials had improperly denied earned time credit to a prisoner held in administrative segregation (ad seg).

Washington law authorizes sentence reductions for “earned time,” which is awarded for prison programming and other positive behavior. Department of Corrections (DOC) Policy 350.100 provides, however, that prisoners confined in ad seg for “20 days or more in one calendar month” are ineligible for earned time unless the confinement is not for “negative behavior.”

William F. Jensen, a former King County sheriff's deputy, was convicted of solicitation to commit first-degree murder. As a former law enforcement officer he was placed in the BAR unit at the Washington State Penitentiary, which houses “vulnerable” offenders.

In January 2011, Jensen was accused of soliciting sex from another BAR unit prisoner; he was transferred to ad seg while the allegation was investigated.

An investigator ultimately decided the charge was unfounded. “Because the investigation concluded that Jensen committed no wrongdoing, he was not placed in administrative segregation for ‘negative behavior,’” the appellate court wrote. The

DOC conceded he had been held in segregation “for his own protection and safety.”

Nevertheless, the DOC refused to grant Jensen 13.53 days of earned time while he was confined in ad seg and refused to expunge records of the investigation.

The Washington Court of Appeals granted Jensen's personal restraint petition, finding the “DOC did not follow its own policy when it denied Jensen the opportunity to accumulate earned time while placed in administrative segregation.” The DOC was ordered to credit Jensen for the earned time he should have received in ad seg.

The appellate court rejected Jensen's expungement arguments, however, holding that “DOC Policy 460.00, which Jensen cites, involves expungement of records following disciplinary hearings.” That policy was inapplicable since “Jensen was never infractioned nor underwent a disciplinary hearing for the January 2011 incident because an investigation revealed the allegations were unfounded.”

The Court of Appeals also rejected Jensen's due process argument, finding he did “not establish that he has a protected liberty interest in the expungement of his records.” See: *In re PRP of Jensen*, 2013 Wash. App. LEXIS 2953 (Wash. Ct. App. Dec. 30, 2013). 🍀



## State of Washington Prison Phone Justice Campaign

### Fighting the High Cost of Prison and Jail Phone Calls!

The Human Rights Defense Center (HRDC) has been reporting on the high cost of telephone calls from prisons, jails and other detention facilities in the U.S. for over two decades in its monthly publication *Prison Legal News*. An award of funds from the settlement in *Judd v. AT&T*, a prison phone-related lawsuit, has allowed us to launch the Washington Prison Phone Justice Campaign (WA PPJ). The goal of the campaign is to eliminate the kickbacks paid by telephone companies to detention facilities and to regulate the exorbitant rates charged to prisoners, their families and others who accept prison phone calls, including attorneys. Video visitation, which is following closely on the same path as the prison phone industry, has also been incorporated into the campaign.

HRDC co-founded the national Prison Phone Justice Campaign in 2011, which resulted in a historic vote by the FCC in August 2013 that capped the rates for **interstate** (long distance) prison phone calls at \$.25/minute for collect calls and \$.21/minute for debit and prepaid calls. Those rate caps became effective on February 11, 2014. While this has helped millions of families stay connected across state lines, it did nothing for prisoners incarcerated in Washington State who make local and **intrastate** (in-state) calls, estimated by the FCC to constitute 85% of all prison and jail calls.

Studies show that a prisoner's ability to communicate with family and friends while incarcerated results in a smoother transition upon release and reduces recidivism. However, excessive phone rates hamper and sometimes eliminate the ability of prisoners to stay in touch with their loved ones.

We need everyone affected by this issue, including prisoners' family members and attorneys, to sign on to the WA PPJ Campaign and tell us how they have been impacted by high prison and jail phone rates. This can be done by accessing the Campaign's website: **www.wappj.org**. Testimonials and video can be uploaded to the site, or people can call 1-877-410-4863 to record their comments. Or comments can be written and mailed to: HRDC, Attn: WA PPJ Campaign, P.O. Box 1151, Lake Worth, FL 33460. We also need billing records from prepaid accounts (2012 to current) for phone calls received from detention facilities, to demonstrate the actual rates charged to recipients of the calls. Billing records can be emailed to: [cwilkinson@humanrightsdefensecenter.org](mailto:cwilkinson@humanrightsdefensecenter.org).

Lastly, any donations to fund the campaign are both needed and appreciated; donations can be made at **www.prisonphonejustice.org**. Only with your support will we be able to end the abusively high costs of prison and jail phone calls in Washington State. Thank you for your support, and please tell others about the Washington Prison Phone Justice Campaign and encourage them to join!

# Massachusetts: Sex Change Ordered for Transgender Prisoner; Court Finds that Two DOC Commissioners Lied

THE *EN BANC* FIRST CIRCUIT COURT of Appeals is considering whether to order the Massachusetts Department of Correction (MDOC) to comply with a federal district court's order requiring that a transgender prisoner suffering from Gender Identity Disorder (GID) be provided with sex reassignment surgery at the state's expense.

Massachusetts officials appealed to the full First Circuit after a three-judge panel of the court voted 2-to-1 in January 2014 to uphold a landmark ruling by U.S. District Court Judge Mark L. Wolf in the case of Michelle Kosilek, who is serving life without parole.

Wolf held that Kosilek, 65, was denied the surgery not for legitimate medical reasons, but rather due to pressure on the MDOC not to use state funding for sex reassignment surgery for prisoners – even though GID is considered by medical professionals to be a legitimate, serious mental health condition.

In a 129-page, September 4, 2012 order, Judge Wolf found that former MDOC Commissioner Michael Maloney had repeatedly lied and engaged “in a pattern of pretense, pretext and prevarication” that was designed to conceal the real reasons for denying Kosilek surgery; those reasons, according to Wolf, included fear of public and political outcry, criticism, ridicule and scorn.

Since early childhood, Michelle Kosilek, who was born Robert, felt she was the wrong gender. Following years of struggle with her gender identity, Kosilek believed a drug counselor, Cheryl McCaul, who said “that his transsexualism would be cured by ‘a good woman.’”

McCaul couldn't have been more wrong. She married Kosilek, but after becoming furious when she caught Kosilek wearing her clothes in 1990, Kosilek strangled her, abandoned her body in the trunk of their car and fled.

“He showed up at his trial in a dress, calling himself Michelle, telling anyone who would listen that his inner woman was trying to overcome his, well, outer man,” the *Boston Globe* reported. “Even his lawyer seemed unsure whether to call him he or she.”

Kosilek was convicted of murder in 1992 and sentenced to life without pos-

sibility of parole; she obtained a legal name change from Robert to Michelle.

After Kosilek twice tried to commit suicide and attempted to castrate herself, GID experts recommended psychotherapy. Prison officials ignored those recommendations. By 2002, Kosilek was at high risk of suicide due to her severe, untreated mental health condition.

MDOC's own expert recommended that Kosilek receive treatment with female hormones and be evaluated for sex reassignment surgery after a year of living as a female. That was not what then-MDOC Commissioner Michael Maloney wanted to hear.

“Maloney did not regard sex reassignment surgery as an appropriate use of taxpayers' money,” the district court found. “Maloney and his colleagues ... thought that any such expenditure would be politically unpopular. Maloney did not want to authorize hormones or sex reassignment surgery for Kosilek or any other inmate unless he was legally obligated to do so.”

Kosilek filed suit, and on August 28, 2002 the court found that her GID constituted a serious medical condition. The court did not order the MDOC to take action, though, because “it expected that the DOC would begin to treat” Kosilek, and found she had failed to prove that Maloney was deliberately indifferent to her serious medical needs. See: *Kosilek v. Maloney*, 221 F.Supp.2d 156 (D. Mass. 2002).

The MDOC revised one of its policies in December 2002, and the following year Kosilek began undergoing evaluation for treatment. In August 2003 she began taking estrogen hormones, and two months later was allowed to begin wearing female undergarments.

However, MDOC Deputy Commissioner Kathleen Dennehy replaced Maloney in December 2003, and immediately “began taking a series of actions intended to delay, and ultimately deny, the medical care that was being prescribed for Kosilek.”

“Dennehy was determined not to be the first prison official in the United States to authorize sex reassignment surgery for an inmate,” Judge Wolf found. “Indeed, she testified ... that she would retire rather than obey an order of the Supreme Court to do so.”

Departing from longstanding MDOC

policy to rely on its doctors to retain specialists, Commissioner Dennehy took the unprecedented step of hiring Cynthia Osborne, a licensed social worker who was “sympathetic to the DOC's opposition to providing sex reassignment surgery and other treatment.” The district court found that “Dennehy was not truthful when she testified that the DOC did not hire Osborne because of her predictable position that Kosilek should not receive sex reassignment surgery.”

In early 2005, while claiming she did not understand that MDOC doctors were recommending sex reassignment surgery for Kosilek, “Dennehy selectively gave interviews to some members of the media in an effort to demonstrate that she was responsive to the political and public opposition to using tax revenues to provide a prisoner sex reassignment surgery.”

As the trial in Kosilek's federal lawsuit began in the spring of 2006, public officials and the media continued to object to her request for a sex change. “Dennehy was aware of these statements, and the widespread public hostility to providing sex reassignment surgery for prisoners,” the court noted.

Ultimately, Judge Wolf found that “Dennehy testified untruthfully on many matters. This contributes to the conclusion that her stated reasons for refusing to allow Kosilek to receive the surgery were pretextual.”

Dennehy resigned in April 2007, and Harold W. Clarke was named commissioner seven months later. “The court directed Clarke to consider some of the evidence presented at trial and decide whether” he would allow Kosilek to receive surgery. However, on April 4, 2008, “seventeen State Senators sent a letter to Clarke” which, the district court wrote, “would have reasonably been interpreted as a veiled threat that appropriations for the DOC might be reduced if Clarke reversed Dennehy's position” as to providing sex realignment surgery. Further, “on April 8, 2008, twenty-five State Representatives wrote to Clarke to express ‘outrage’ at the request that taxpayers fund a ‘sex-change’ operation for Kosilek.”

Clarke received and understood the message. On May 7, 2008 he informed



the court that safety and security concerns implicated by providing the surgery were “insurmountable.”

However, the “stated reasons for denying Kosilek the care the DOC doctors have prescribed are not reasonable and made in good faith,” the district court held in its September 4, 2012 order. “Rather, the defendant has refused to provide the only adequate treatment for Kosilek’s serious medical need in order to avoid public and political criticism. This is not a legitimate penological purpose.”

“Elected officials are entitled to express their views on whether a prisoner should receive sex reassignment surgery. The media has the right to comment critically on the conduct of prison officials and judges,” the court added. “Every citizen has a right to criticize public officials, including judges, too.”

Regardless, Judge Wolf noted that the Supreme Court has held the Eighth Amendment’s prohibition against cruel and unusual punishment, which extends to the denial of treatment for prisoners’ serious medical needs, “may not be submitted to vote; it depends on the outcome of no elections.”

Wolf wrote that “it is despised criminals, like Kosilek, who are most likely to need the protection of the Eighth Amendment and its enforcement by the court. Denying adequate medical care because of a fear of controversy or criticism from politicians, the press, and the public serves no legitimate penological purpose.”

The district court therefore ordered the MDOC to provide Kosilek’s prescribed sex reassignment surgery “as promptly as possible,” as it was “evident that the defendant will continue to violate Kosilek’s Eighth Amendment rights if a court order is not issued.” The order was directed at MDOC

Commissioner Luis Spencer, who had replaced Clarke in 2011.

In upholding Wolf’s order on January 17, 2014, a First Circuit Court of Appeals panel wrote that receiving medically necessary treatment is a constitutional right that must be protected “even if that treatment strikes some as odd or unorthodox.”

The appellate court affirmed the district court’s findings, including “that Kosilek has a serious medical need for the surgery, and that the DOC refuses to meet that need for pretextual reasons unsupported by legitimate penological considerations,” concluding that Judge Wolf “did not err in granting Kosilek the injunctive relief she sought.” See: *Kosilek v. Spencer*, 740 F.3d 733 (1st Cir. 2014), rehearing en banc granted, 2014 U.S. App. LEXIS 2660.

However, in appealing the three-judge panel’s ruling to the full Court of Appeals, the state contended during oral argument in May 2014 that Kosilek does not need sex reassignment surgery because she has already received a substantial amount of treatment, including female hormones, psychotherapy and laser hair removal to make her more feminine.

“While we acknowledge the legitimacy of a gender identity disorder diagnosis, DOC’s appeal is based on the lower court’s significant expansion of the standard for what constitutes adequate care under the Eighth Amendment, and on substantial safety concerns regarding Ms. Kosilek’s post-surgery needs,” the MDOC said in a statement.

“The clinician didn’t say you must have this surgery, but that if you want it you can get it,” MDOC attorney Richard McFarland told the appellate court. He added that only 5% of people diagnosed with GID actually undergo sex reassignment surgery.

Kosilek’s lawyer, Joseph Sulman, responded that the treatment already received by his client has alleviated “some of her pain, but she still suffers from severe mental anguish that cannot be treated without the surgery.”

He added: “Under the Eighth Amendment, the standard is that prisoners are entitled to adequate medical care, minimally adequate medical care, not the care of their choice or optimal care. In this case, the doctors hired by the prison said that this is her minimally adequate care. That she has a serious medical need that can only be treated by [surgery].”

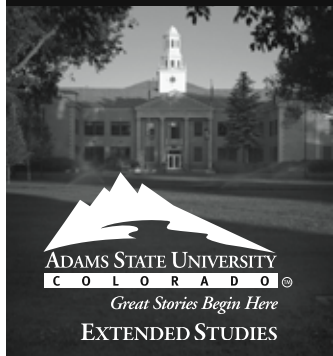
McFarland also argued that serious security issues could result from housing Kosilek at an all-male facility. He told the appellate court that if Kosilek received the surgery, her notoriety could create a dangerous environment for her among other prisoners.

But Circuit Judge William J. Kayatta, Jr. said the only reason Kosilek is considered notorious is because she has “consistently pursu[ed] her rights through the U.S. Constitution.” He noted that the corrections department already holds other infamous prisoners; also, the First Circuit panel remarked in its January 2014 ruling that the Washington Department of Corrections has “housed a post-operative female transgender inmate, also serving a life sentence for murdering a female relation,” without experiencing security-related issues.

The Court of Appeals’ *en banc* decision remains pending. If the MDOC loses the appeal, it would be the first state prison system required to provide sex reassignment surgery. ■

Additional sources: [www.cbs12.com](http://www.cbs12.com), [www.abc15.com](http://www.abc15.com), [www.wcvb.com](http://www.wcvb.com), [Boston Globe](http://BostonGlobe.com)

## Earn an Adams State University Degree via Correspondence Courses Through the Mail



- No internet access required
- Degree options available — Associate of Arts or Science, Bachelor degrees in English/Liberal Arts, Business Administration, HAPS/Political Science, HAPS/History, Interdisciplinary Studies, Sociology, Master Degree in Business Administration, and Paralegal Certificate Program
- Affordable tuition — \$165/semester hour for undergraduate correspondence courses, \$350/semester hour for Master level correspondence courses. Payment options include cashiers check, credit card, money order or verified personal check.
- Accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools (the highest level of post-secondary accreditation available)
- 20+ years of experience serving incarcerated students
- Veteran friendly/GI Bill accepted
- FREE unofficial evaluation of previously earned credits
- Student advisor with over 21 years working with incarcerated individuals

### Prison College Program

Call or write to receive additional information:

800-548-6679

Adams State University

PLN Inquiry,

Suite 3000

208 Edgemont Blvd.

Alamosa, CO 81101

# \$350,000 Settlement in PLN Censorship Suit Against Ventura County, California

by Derek Gilna

**I**N A VICTORY FOR THE FIRST AMENDMENT rights of prisoners and those who correspond with them, Prison Legal News recently obtained a substantial settlement in a lawsuit filed against the Ventura County Sheriff's Office in California.

PLN brought suit in federal district court on January 31, 2014, alleging that the sheriff's policy of limiting incoming and outgoing mail to postcards at the county jail violated PLN's right to freely distribute information, correspondence and subscription forms to prisoners at the facility.

In recent years, PLN has challenged postcard-only policies at jails across the nation with a high degree of success, arguing that such policies are unconstitutional and unreasonably restrict correspondence between prisoners and those on the outside, including their family members and children. [See, e.g.: *PLN*, Oct. 2014, p.23; April 2014, p.44].

Ventura County attempted to justify its postcard-only policy by arguing that contraband had been sent to the jail in envelopes and prisoners were using letters to conduct criminal activity. U.S. District Court Judge George H. King found those arguments unpersuasive, and entered a preliminary injunction on May 29, 2014 that barred the sheriff's office from enforcing the postcard-only policy. [See: *PLN*, July 2014, p.16].

The county initially appealed the preliminary injunction order to the Ninth Circuit, but then settled the case in July 2014. Under the settlement, Ventura County agreed to a restructuring of the sheriff's policy related to prisoner mail and paid \$350,000 in damages, attorneys' fees and costs.

The county agreed "[to] not refuse to deliver correspondence to or from inmates at the County's jails on the ground that correspondence is not written on a postcard ... [to] not refuse to deliver correspondence, catalogs or subscription order forms to inmates at the Jail on the basis that inmates cannot order subscriptions or other reading material, ... [to] not refuse to deliver correspondence to inmates at the Jail that were Xeroxed, photocopies or printed from the Internet, ... [to] not refuse to deliver copies of publications from Plaintiff or other publishers on ac-

count of sexually 'suggestive' content, unless the publication contains images of exposed genitalia, buttocks or female breasts and/or graphic depictions of sexual acts, [and to] not prohibit inmates from ordering books, magazines or other publications."

The Ventura County Sheriff's Office also agreed to "conduct a four (4) hour training block in order to adequately familiarize all mailroom staff persons with the provisions of the [new] mail policy," and "thereafter conduct two (2) hour annual legal updates." The district court retained jurisdiction to enforce the terms of the

settlement, and entered a permanent injunction on September 4, 2014.

PLN was represented by attorneys Brian Vogel of Ventura and Ernest Galvan with the San Francisco law firm of Rosen Bien Galvan & Grunfeld, plus Lance Weber, general counsel for the Human Rights Defense Center, PLN's parent organization. See: *Prison Legal News v. County of Ventura*, U.S.D.C. (C.D. Cal.), Case No. 2:14-cv-00773-GHK-E. ■

Additional source: [www.courthousenews.com](http://www.courthousenews.com)

## California Law Denying Good Time Credits to Gang Members in SHUs Held Constitutional

by David Reutter

**T**HE NINTH CIRCUIT COURT OF APPEALS held on April 25, 2014 that a California law which denies good conduct credits to prisoners who are validated gang members held in a Security Housing Unit (SHU) does not violate the Ex Post Facto Clause.

California prisoner Manuel Francisco Nevarez received a 12-year prison sentence for robbery in 2000. Eight years later he was convicted of smuggling marijuana into prison, resulting in an additional three-year sentence. To compound his problems, on December 12, 2008, prison officials validated him as an associate of the Mexican Mafia prison gang, which resulted in an indeterminate term in the SHU at Pelican Bay State Prison.

On January 25, 2010, California Penal Code Section 2933.6 was amended to make validated gang affiliates ineligible to earn sentence reduction credits while "in the Security Housing Unit, Psychiatric Services Unit, Behavioral Management Unit, or the Administrative Segregation Unit for that misconduct."

Prior to the amendment, Nevarez earned one day of good conduct credit for every two days served. While he did not lose the credits earned prior to the statutory amendment, he could no longer earn them while held in the SHU. He challenged the

amendment as a violation of the Ex Post Facto Clause of the U.S. Constitution. His habeas corpus petitions in state courts and federal district court were denied, and he appealed.

Nevarez argued that *Weaver v. Graham*, 450 U.S. 24 (1981) and *Lynce v. Mathis*, 519 U.S. 433 (1997) [*PLN*, April 1997, p.1] made it clear that a post-conviction amendment that diminishes a prisoner's good time credits for prior conduct violates the Ex Post Facto Clause because it effectively increases the prisoner's punishment – i.e., the length of time he must serve.

The Ninth Circuit determined the facts in *Weaver* and *Lynce* were distinguishable. It agreed with a state court that found Section 2933.6 does not punish "the criminal conduct for which petitioner was imprisoned," but instead "punishes for conduct that occurred after the commission of, or the conviction for, the punishable offense."

The appellate court noted the only relevant question under the AEDPA is whether that analysis is an objectively unreasonable application of clearly established federal law. "It is not," the Court of Appeals held. Accordingly, the district court's denial of Nevarez's habeas petition was affirmed. See: *Nevarez v. Barnes*, 749 F.3d 1124 (9th Cir. 2014), *petition for cert. filed*. ■

# ***Battling the Administration: An Inmate's Guide to a Successful Lawsuit,*** by David J. Meister (Wynword Press, April 2014). 566 pages, \$34.95 paperback

Book review by Gary Hunter

**W**HEN ASKED WHAT THE FIRST STEP would be in challenging a disciplinary charge, prisoners will give a variety of answers. Some say it is to find legal precedents. Others say obtaining witness statements is most important. But one person, David J. Meister, not only knows the correct answer, he wrote a book on the subject.

Prisoners suffer violations of their constitutional rights in numerous ways, and many times the injustice also includes receiving a disciplinary charge. In his book, *Battling the Administration: An Inmate's Guide to a Successful Lawsuit*, Meister covers an extensive variety of ways in which prisoners are harmed and explains, in easy-to-understand terms, exactly how an injured party can obtain relief.

While it may seem like an oversimplification, the book begins by explaining that any successful legal battle begins with preparation. Divided into five parts, Part One, appropriately titled "Getting Ready," explains why something as simple as acquiring a notebook, a calendar and charts are essential to mounting a successful legal challenge. For clarity, Mr. Meister provides sample forms for organizing the key elements (who, what, where, when, why and how) of an effective legal claim. He explains how to exhaust administrative remedies, accumulate evidence, conduct discovery and find the appropriate sources to support your claim.

Part Two of *Battling the Administration* explains the nuances of clear and effective writing. Grammar and punctuation are of paramount importance; an entire legal argument can be undone with a single incorrect word. Something as simple as shortening a sentence can make it more powerful. Mr. Meister breaks down the writing process into four separate sections with over fifty pages on the effective use of English grammar, legal citations, legal composition and how to actually write a legal brief.

Part Three, entitled "Filing and Litigating," is without question the best part of this book because it covers every aspect of

the court process. Beginning with choosing the right vehicle to plead your case, this section of *Battling the Administration* walks the reader through each step of the litigation process. It is chock full of examples, sample sheets and suggestions on how to format and file a claim; it explains motions, subpoenas, discovery strategies and more. From the original brief to the final appeal, the 140 pages in this section show you how to successfully present a claim.

Parts Four and Five are the muscle of this book. Behind every successful pleading is a Supreme Court precedent. Even convicted prisoners have basic constitutional rights that cannot be forfeited simply due to their incarceration. In Part Four, Mr. Meister lists the Supreme Court standards for most major causes of action, and explains the legal theory supported by each Supreme Court precedent to help you lay a firm foundation for your claim. In short, Part Four clearly outlines your rights and how to secure them.

Part Five provides the incarcerated litigant with a tremendous advantage. Because prisoners do not always have the option of spending their days researching case law, this section of *Battling the Administration* provides an extensive compilation of legal precedents. It contains hundreds of case cites covering subjects such as constitutional rights, administrative rules and regulations, and dozens more.

It is rare to find a single book that will walk you through the entire litigation process, and even rarer to find such a book written specifically for prisoners. But *Battling the Administration* does just that. Whether you're a first-time litigator or an experienced jailhouse lawyer, whether you are suing for millions of dollars or just trying to beat a bogus disciplinary charge, *Battling the Administration* can help you defend your legal rights.

*Battling the Administration* is available from Amazon.com or directly from Wynword Press, P.O. Box 557, Bonners Ferry, ID 83805; 208-267-0817, [www.wynwordpress.com](http://www.wynwordpress.com). ■

# **LEARN TO PROTECT YOUR RIGHTS**

## **YOU HAVE A RIGHT TO**

- Adequate medical care
- Protection from assault
- Humane living conditions
- Safety from officer abuse

Learn how to defend your basic human rights with the comprehensive litigation guide, ***Protecting Your Health and Safety***, 2nd edition, written specifically for prisoners who are unable to receive help from a lawyer.

Written by Robert E. Toone  
Edited by Dan Manville  
*A Project of the Southern Poverty Law Center\**

**COST** \$16 total  
(\$10 + \$6 shipping/handling)  
FREE shipping/handling for orders from Prison Legal News over \$50

## **ORDER A COPY**

Send a check  
or money order to:  
**Prison Legal News**  
**PO Box 1151**  
**Lake Worth, FL 33460**  
**561-360-2523**

*Be sure to include your name, identification number (if any), and mailing address. We also accept VISA and Mastercard. If using a credit card, please include the type of card (VISA or Mastercard), card number, and expiration date.*

This book does not deal with legal defense against criminal charges or challenges to convictions that are on appeal. Edition last revised in 2009.

\*Please do not send orders to the Southern Poverty Law Center.

## Overtime Pay for New York Prison Guards, Nurses “Out of Control”

SOME BLAME PRISON UNDERSTAFFING on a weak talent pool or an inability to hire sufficient staff in the rural areas where prisons are often located. Others theorize the problem is more systemic, arguing that corrections departments and private prison companies purposefully employ fewer personnel to reduce costs associated with payroll and benefits.

Whatever the reason, New Yorkers have found themselves paying as much as double some prison employees' salaries in overtime expenses to accommodate staff shortages. According to a report from WNYT Channel 13, the top ten “overtime earners” in the New York Department of Corrections and Community Supervision (DOCCS) were paid \$789,000 in 2011. And that's in spite of DOCCS' relative success in recent efforts to curb overtime spending.

For fiscal year 2012-2013 – the most recent year for which data is available – DOCCS logged 2.44 million hours of overtime costing around \$107 million at an average overtime rate of \$42.66 per hour for correctional officers and \$53.04 per hour for sergeants. The total number and cost of overtime hours represented a decrease from the previous fiscal year.

“It's still very, very high,” said state Senator Jeff Klein, who chairs the Task Force on Government Efficiency. “It's unacceptable, and by having managers deal with the problem on the agency level, that's how we're going to reduce that out-of-control overtime in the state of New York.”

Then-DOCCS Commissioner Brian Fischer had previously told WNYT that the department's overtime spending was in part due to a nursing shortage.

“I'm not going to close down an infirmary, I'm not going to close down a security post,” Fischer said in 2010. “So it's not mismanagement, it's managing within the structure that I'm given. And right now the structure is kind of tough.”

Matthew Mercy, a nurse at the Bedford Hills Correctional Facility, received \$115,373 in overtime in 2011 in addition to his base salary of \$58,469. Six DOCCS nurses were among the top 10 overtime earners, averaging more than \$82,000 each in overtime pay.

A DOCCS report for fiscal year 2012-2013 noted an 8.9% increase in the number of overtime hours for medical care, mainly for transportation and staffing when prisoners are taken to outside hospitals.

But the same report cited guard absences, “driven primarily by sick leave, workers' compensation and military leave,” as having “the biggest impact on overtime.” The report said that due to absences during fiscal year 2012-2013, overtime hours exceeded the amount allocated in the state budget by more than 25%. For example, while the state had budgeted for 11 days of sick leave for each guard, on average they used 14 days of sick leave during the fiscal year – resulting in an additional 424,104 hours of overtime.

Positions that remained unfilled accounted for approximately 1.58 million hours of overtime during 2012-2013. Still, the report indicated that was a 3% decrease from previous levels. Other factors impacting overtime costs included overtime to cover construction projects and comply with OSHA requirements.

Most overtime in the DOCCS occurred in maximum-security facilities. Of the top ten overtime wage earners, the remaining four were sergeants and lieutenants. Some were earning base annual salaries approaching \$100,000, including Sing Sing Sgt. Eddie Josey, who received \$83,797 in overtime beyond his \$75,686 salary in 2011.

Commissioner Fischer refused further requests from WNYT for interviews concerning overtime wages. However, state Comptroller Tom DiNapoli said all state agencies needed to do a better job of monitoring and reducing overtime.

“Certainly if there are emergency situations, nobody's saying there will never be overtime,” he stated. “But in some agencies, it does seem like a matter of course rather than looking for effective alternatives to be more efficient.”

Sources: <http://wnyt.com>; [www.osc.state.ny.us](http://www.osc.state.ny.us); “Report on Security Staffing 2013,” New York State Department of Corrections and Community Supervision

## Texas Prison Homicides Rise Sharply in 2012, Decline in 2013

TEXAS OFFICIALS SAID THEY WERE AT A loss to explain an unexpected surge in prison homicides during 2012, when the number of murders rose to the highest level in more than a decade. But others pointed to understaffing, inexperienced guards and inadequate supervision of a large prison population composed of more violent offenders serving longer sentences.

In calendar year 2012, a dozen prisoners were killed throughout Texas' sprawling prison system compared to three in 2011, five in 2010 and just one in 2009.

“There appears to be no patterns to this,” said Rick Thaler, director of the Correctional Institutions Division of the Texas Department of Criminal Justice (TDCJ), who has since retired. “It's very random.”

“It definitely jumped out at us,” TDCJ Inspector General Bruce Toney told the Associated Press. “It definitely has not been an average year.”

Toney noted the murders were not

related and had occurred throughout the state's 111-unit prison system. No one knows the reason for the increase, he said. Most of the homicides did not involve weapons other than “hands and feet kicking” and more than half resulted from fights between cellmates, which are difficult to prevent, he added.

“It's a situation where they have some kind of disagreement and it results in a death,” Toney said. “Inside a prison cell, everything is metal so that leaves the potential for injuries if someone gets knocked down.”

According to TDCJ policy, prisoners are screened for rivalries and conflicting gang affiliations. Officials said prisoners are paired with others who have similar backgrounds, past histories and medical restrictions, and who are within nine years of each other's age and within 40 pounds of each other's weight. The classification system does not take race or ethnic origin into account.



"Most all of them hadn't had any previous issues with their cellmate, at least that they'd told us about," Thaler stated.

But family members and advocacy groups question how a prisoner could be killed so quickly that guards are not able to intervene.

"So they don't know what's causing all these deaths, and they can't do anything to stop it? That's an abominable excuse," said Terrence Benavides, who has three relatives in prison. "It's their job to run a safe and secure system. And three times the number of murders [over the previous year] tells me that something isn't right."

Some TDCJ guards have cited tougher conditions in prison – more prisoners convicted of violent crimes and serving longer sentences. They believe that creates more opportunities for fights and homicides, because many facilities are understaffed and large numbers of guards are newer hires with less experience.

"Understaffing and lack of training are two big issues right now inside the agency, and both of those can adversely affect supervision," said Brian Olsen, executive director of the union that represents more than 6,000 Texas prison guards. "There are also issues with complacency and working in a difficult environment, where the inmates are more violent than ever."

Lance Lowry, a 13-year veteran prison guard and president of the Huntsville union local, the largest in the state, agreed. "The supervision of the inmates is not what it once was," he stated. "Having a turnover rate as high as TDCJ does among correctional

officers means there's more inexperience out there. And that plus short staffing and a tougher inmate population adds up."

An internal TDCJ report reviewed by the *American-Statesman* revealed that at the end of October 2012, seven prisons – mostly in western and southern Texas – had staffing levels under 70%, a threshold when staffing can become an operations issue. The lowest staffing cited in the report was at the Smith Unit, where 48% of the guard positions were vacant.

However, officials said that at the same time the number of homicides increased, the number of other serious offenses fell. For example, reports of sexual assault dropped from 343 during 2011 to 265 through October 2012, cases of weapons possession fell from 1,102 to 837 during the same period and serious offender assaults declined from 1,222 to 1,028.

"A broad sweep of the indicators is that the system is operating safely and smoothly with fewer problems – and then this one number," said TDCJ Executive Director Brad Livingston, referring to the spike in homicides in 2012.

"Anytime we have more than zero, we are concerned," he added.

In 2013, the number of murders in Texas prisons dropped to four. The TDCJ's homicide statistics do not, of course, include executions – which are typically classified by medical examiners as homicides. Texas executed 15 prisoners in 2012 and 16 in 2013. ■

Sources: *Associated Press*, [www.statesman.com](http://www.statesman.com), [www.reporternews.com](http://www.reporternews.com)

## law offices of Susan L. Burke

Please contact me if you want to join the nation-wide class actions against telephone companies who have been overcharging inmates and their families for phone calls.

Susan L. Burke  
Law Offices of Susan L. Burke  
1611 Park Avenue  
Baltimore MD 21217  
Phone 410.733.5444  
Website: [www.burkepllc.com](http://www.burkepllc.com)

## YOUNG & INCARCERATED

By: E.E. III

An inspiring and powerful  
success guide.

"This book is a must read for all former and currently incarcerated individuals who are truly committed to the pursuit of happiness and fulfillment."  
—*Street Talk magazine*

"Simply put, this is the best book of its kind on the subject matter from inmate to boss."  
—*Philadelphia Chronicles*

Price: \$15 + \$3 S/H. Free S/H for inmates.

Please make all payments to:  
Harris Publications  
PO Box 28773  
Philadelphia, PA 19151-7773

E-book available on Amazon.com



## CALIFORNIA LIFER NEWSLETTER

**Published by Life Support Alliance**

CLN: Comprehensive newsletter mailed every 8 weeks containing state and federal cases, parole board news, statistics, legislation and articles of interest to Lifers and their supporters.

### CLN SUBSCRIPTIONS

Prisoners .... \$30 per year (or 100 stamps)  
Others .... \$90 per year

**Make checks payable to LSAEF**

(Life Support Alliance Education Fund)

**CLN, P.O. Box 277, Rancho Cordova, CA. 95741**

*CLN no longer provides copy service of legal cases, articles or news and materials from the Internet.*

[www.lifesupportalliance.org](http://www.lifesupportalliance.org) (916) 402-3750

Photo Tryst  
PO Box 10756  
Jacksonville FL 32247

Quality Pics of Quality  
Babes

\*\*\*\*We've Moved!\*\*\*\*

All catalogs 450 full color pics

Summer 2013 free with SASE

All other catalogs \$4.00 or 10 forever stamps, and ship with a coupon for 5 free pics with your minimum order of 10

Winter 2014, Spring 2014, Summer 2014, Asian/Hispanic#1  
Topless #1 (contains frontal nudity) All Nude #1 (see it all)

Our next general (season) catalog free with each order

You can deposit funds with us and order your pics "on account"

We accept checks and money orders

Stamp orders are only with stamp coupons obtained with regular orders

**Oregon, Utah and Virginia consistently deny our catalogs so we cannot do business there. Sorry.**

# Ethics Charge Against Former U.S. Marshal Ends in Pre-Trial Diversion

by Derek Gilna

**A** CRIMINAL ETHICS CHARGE FILED against a former U.S. Marshals Service agent in Arizona who had applied for a job with a private prison company he previously monitored has been dropped, and prosecutors let him enter a pre-trial diversion program. At the same time, former agent Thomas B. Bullen is proceeding with a lawsuit against the Marshals Service.

The Arizona U.S. Attorney's Office refused to comment on Bullen's case or the requirements of the pre-trial diversion program, which he agreed to enter in October 2013.

Bullen was indicted in 2012 for allegedly violating a federal ethics law that prohibits federal employees from taking jobs with companies they are responsible for overseeing. In Bullen's case that included Corrections Corporation of America (CCA), which operates a detention facility in Florence, Arizona.

Bullen was a chief administration officer for the Marshals Service until 2011, when he was demoted and put in charge of overseeing the agency's contract with CCA and monitoring the company's compliance.

A federal indictment said Bullen had described his duties in an unrelated proceeding, stating: "I go throughout the facility and compare the contract with what they are doing. I make surprise inspections at all times of the day or night; and file reports with the Arizona U.S. Marshals Service and also confer with the Office of Federal Detention Trustee in Washington, D.C."

When Bullen learned CCA's health administrator at the Florence facility was retiring, he applied for her job. The indictment noted that during a November 18, 2011 interview, Bullen told CCA he did not intend to notify the Marshals Service that he had applied for the position until he knew whether or not he would be hired.

CCA offered him the position on November 22 and he submitted his resignation to the Marshals Service. But instead of accepting it, the agency placed Bullen on administrative leave and opened an investigation into a possible ethics violation. He was then indicted on one count of "conflict

of interest" based on 18 U.S.C. §§ 208 and 216. Meanwhile, CCA hired someone else for the position.

Ironically, Bullen had undergone ethics training in 2008 and again in 2011, part of which covered the regulations barring federal employees from seeking employment that conflicts with their official duties.

According to court documents, "during that training, Bullen was specifically instructed that 'if an employee who participates personally and substantially in a federal procurement exceeding \$100,000 is contacted by a vendor/bidder with an offer for employment,' the employee must refuse the offer and report the contact in writing to a supervisor."

Bullen was not the first government employee who failed to comply with the law when seeking employment with a private company he once monitored. Although most violations of this type are usually resolved by the employee's resignation and

loss of benefits, there have been other criminal prosecutions.

Meanwhile, Bullen's lawsuit against the Marshals Service alleges that his 2011 demotion was due to discrimination because two of his direct supervisors were Hispanic and younger, less-qualified women were hired to replace him. He is also pursuing a retaliation claim.

"Mr. Bullen has filed numerous ... grievances against the Marshals Service management," Arizona U.S. Marshal David Gonzales told the *Phoenix New Times*. "All have been dismissed, and I'm confident this one will be, too."

Bullen's suit currently remains pending, with a federal district court denying the government's motion to dismiss on October 8, 2014. See: *Bullen v. Holder*, U.S.D.C. (D. Ariz.), Case No. 2:13-cv-01349-TMB. ■

Sources: *www.azcentral.com*, *Phoenix New Times*

## Los Angeles County Jail Exploits Prisoners, Families with High Phone Costs

by Derek Gilna

**O**FFICIALS WITH LOS ANGELES COUNTY's jail system have been criticized by County Supervisor Zev Yaroslavsky for exploiting prisoners and their families by charging excessive phone rates. "Everyone's making a lot of money at the expense of inmates' families," Yaroslavsky said.

Prisoners' rights advocates, including Prison Legal News, have cast a spotlight on exorbitant prison and jail phone costs for years, but reform has come much too slowly. [See: *PLN*, Dec. 2013, p.1; April 2011, p.1]. Meanwhile, county sheriff's offices around the country have long enjoyed a steady revenue stream from inflated jail phone rates, including L.A. County.

According to a September 8, 2014 news report, under its current contract with phone service provider Global Tel\*Link, the L.A. County Sheriff's Department receives 67.5% of the revenue generated from jail phone calls in "commission" kickbacks, with

guaranteed minimum annual payments of \$15 million. Global Tel, an Alabama-based company, provides the county's jail system with about 5,000 pay phones.

One prisoner's mother, Kim Iannone, said that after her son was arrested she received an automated call from the company requiring her to set up a prepaid account to accept phone calls from the jail. The cost to fund the account? At least \$25.

Her son made one call for about six minutes and Iannone was charged \$3.15. After he was released she presumed her money would be automatically refunded, but that was not the case. She was told she had to pay a refund fee of \$5.00. She wasn't happy, saying: "The Los Angeles jail system steals from us."

Global Tel\*Link took over the county's jail phone contract in 2008 without the benefit of competitive bidding. At that time the company's rates were \$3.54 for the

first minute and \$.10 for each additional minute, but Global Tel later lost the contract to Public Communications Services (PCS), which cut the rates to \$1.25 for the first minute plus \$.15 per additional minute. Global Tel then acquired PCS and regained the county's jail phone contract in September 2011.

L.A. County Sheriff's Department spokesperson Karen Dalton said commission payments from the phone contract are used to fund education programs and upkeep at the jail, and if the county didn't "have those dollars, we wouldn't be able to provide life skills [programs] and other resources." However, Yaroslavsky noted that just because people are incarcerated, "That doesn't give us the right to fleece them."

The situation in Los Angeles County, unfortunately, is only the tip of the iceberg. Across the U.S., county sheriffs receive substantial amounts of money from phone service providers at the expense of a captive audience and their families – which explains why groups such as the National Sheriffs' Association (NSA) have opposed prison and jail phone reforms.

For example, on October 30, 2013, the

NSA, American Correctional Association and Major County Sheriffs' Association submitted a joint letter to the Federal Communications Commission, expressing "extreme disappointment and fundamental concern" with the FCC's order capping interstate prison and jail phone rates, and stating the FCC had "failed to appreciate the complex and specialized environment in which inmate calling services are offered."

The organizations wrote they were not opposed to "reasonable regulation of [phone] rates and fees that inflate the cost to the consumer." However, they apparently objected to regulations that reduce the amount of commission kickbacks received by sheriff's offices.

Los Angeles County has the largest jail system in the nation, and the minimum \$15 million in annual commission revenue the county receives under its contract with Global Tel is more than the phone revenue received by any state prison system except Ohio. 📰

Sources: *Los Angeles Times*, *Topeka Capital-Journal*, [www.dailykos.com](http://www.dailykos.com)

NOLO



**Win Your Lawsuit**  
Sue in California Superior Court  
Without a Lawyer

---

**\$39.99**

Order from **Prison Legal News**  
P.O. Box 1151  
Lake Worth, FL 33460  
561-360-2523  
Add \$6 shipping for orders under \$50

[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

## AHRONY, GRAHAM, & ZUCKER, LLP

### A POST-CONVICTION LAW FIRM

**Appeals**

**Habeas Corpus  
Writs (Factual  
Innocence)**

**Parole Hearings**

**SB 260 Hearings**

**MDO Hearings**

**Re-Sentencing**



**Bruce Zucker**

**Orly Ahrony**

**Ian Graham**

**Probation Violations**

**Rap Sheet Correction**

**Prison &  
Parole Issues**

**115 Discipline Issues**

**California & Federal  
Courts**

12400 WILSHIRE BLVD. SUITE 400 • LOS ANGELES, CA 90025

TEL. (310) 979-6400 • [WWW.AHRONYGRAHAM.COM](http://WWW.AHRONYGRAHAM.COM)

California Cases Only • Unsolicited Original Documents Will Not Be Returned

This is an Advertisement for Legal Services

# Ninth Circuit: Prisoner Validated as Gang Member May Challenge Debriefing Procedures

by Mark Wilson

ON JANUARY 15, 2014, THE NINTH Circuit Court of Appeals reversed the dismissal of a prisoner's claim related to "debriefing" with respect to his alleged gang affiliation.

In 2007, California prisoner Ricky Gonzales was validated as a Northern Structure gang associate and indefinitely placed in segregation in a Secured Housing Unit (SHU).

He filed a state habeas corpus petition challenging the evidentiary basis for his gang validation. The Superior Court denied his petition, concluding that the validation was supported by "some evidence." The California Court of Appeal and state Supreme Court upheld that decision.

On March 29, 2010, Gonzales filed suit in federal court under 42 U.S.C. § 1983, challenging the validation process. He also alleged that the prison system's debriefing procedures, "by which validated gang members renounce their gang membership, divulge gang-related information, and earn their release back into the prison's general population," violated the Eighth Amendment because they placed him at risk of harm from other prisoners.

On initial screening, the district court dismissed the validation claims as being barred

by claim preclusion due to the state habeas corpus ruling. Further, "[b]ecause Gonzales had consistently denied being a gang member, the district court concluded that he had 'alleged no facts which would suggest that [he] could debrief,' and therefore lacked standing to challenge the debriefing policy."

On appeal, the Ninth Circuit upheld the dismissal of Gonzales' 19 validation-related claims due to "the claim-preclusive effect of California's denial of his habeas petition," and provided a detailed discussion of claim preclusion based on state court habeas rulings.

The appellate court reversed the dismissal of the debriefing claim, however, finding Gonzales did "not allege that it is impossible for him to debrief, but that it is impossible for him to debrief successfully. As an adjudicated gang member, he is eligible to debrief, regardless of whether he is, in fact, a member of Northern Structure. Of course, if his allegations are true, he will not be able to convince prison officials that he has renounced his non-existent gang membership, a requirement to debrief successfully."

Regardless, "the risk of retaliation from other gang members ... inheres in becoming an 'informant,' regardless of whether his information is accurate," the Court of

Appeals concluded. Therefore, Gonzales had established standing for his debriefing claim. The dismissal of the validation claims was affirmed while the dismissal of the Eighth Amendment debriefing claim was reversed and remanded. See: *Gonzales v. California Department of Corrections*, 739 F.3d 1226 (9th Cir. 2014).

Following remand, on April 28, 2014 the district court allowed Gonzales to file an amended complaint, "because his complaint is deficient as to the one claim on which the Ninth Circuit reversed, and plaintiff has indicated he wants to file an amended complaint to assert an additional claim." The court provided helpful instructions as to the elements that Gonzales should address or include in the amended complaint, noting that his original complaint "was needlessly long-winded because it included legal argument and general observations about the gang validation process, neither of which belong in a pleading."

However, the district court then dismissed Gonzales' amended complaint on September 11, 2014, finding it was almost identical to the claims raised in *Ashker v. Brown* – a federal class-action suit challenging SHU placement and conditions. [See: *PLN*, Oct. 2014, p.30]. The court wrote that "An individual suit for injunctive and equitable relief from allegedly unconstitutional prison conditions may be dismissed when it duplicates an existing class action's allegations and prayer for relief," and noted Gonzales was a class member in *Ashker*.

Less than three weeks later the district court granted Gonzales' "short and simple" motion for reconsideration, reinstating the Eighth Amendment debriefing claim in his amended complaint while upholding the dismissal of his due process claim. Gonzales had successfully argued that while he was a member of the due process class in *Ashker*, he did not qualify as a member of the Eighth Amendment class in that case; therefore, his Eighth Amendment claim should not have been dismissed.

This case remains pending, with Gonzales proceeding pro se. See: *Gonzales v. California Department of Corrections*, U.S.D.C. (N.D. Cal.), Case No. 4:10-cv-01317-CW; 2014 U.S. Dist. LEXIS 140485. ■

**The Drug Policy Alliance (DPA)** is the nation's leading organization promoting drug policies that are grounded in science, compassion, health and human rights.

DPA ([www.drugpolicy.org](http://www.drugpolicy.org)) is putting out a call for drug war stories. If you would like to be profiled in the media your story would be entered in a data base for possible use.

Please fill out the information asked below and send it to: **Drug War Stories Drug Policy Alliance, 15th Floor, 131 West 33rd Street, NY, NY 10018**

Name of the incarcerated individual \_\_\_\_\_

Current prison he/she is in \_\_\_\_\_

Ethnicity \_\_\_\_\_ Kind of drug involved \_\_\_\_\_

Length of sentence \_\_\_\_\_ Weapon involved (yes or no) \_\_\_\_\_

Contact information for person on behalf of imprisoned individual (email/phone number) \_\_\_\_\_

Short story of your case \_\_\_\_\_



# New York False Imprisonment Claim Revived; Administratively-Imposed PRS Term Invalid

by Mark Wilson

ON DECEMBER 26, 2013, A NEW YORK appellate court reversed a lower court's dismissal of a prisoner's false imprisonment claim.

In 2000, Francis Moulton was sentenced to 42 months in prison on a robbery conviction. The trial court did not impose a mandatory term of post-release supervision (PRS), but the Department of Correctional Services (DOCS) administratively added a five-year PRS term when Moulton was released in 2003.

In 2006, the Second Circuit Court of Appeals held that the administrative imposition of a PRS term violates due process and is a nullity. See: *Earley v. Murray*, 451 F.3d 71 (2d Cir. 2006) [*PLN*, April 2010, p.46].

Nevertheless, DOCS did not rescind Moulton's administratively-imposed PRS term and he was arrested and reincarcerated several times for violating the conditions of his PRS.

The New York Court of Appeals held on April 29, 2008 "that only a sentencing court has the authority to impose the PRS component of a defendant's sentence and that DOCS acted in excess of its jurisdiction when it administratively imposed a period of PRS." See: *Matter of Garner v. New York State Dept. of Correctional Servs.*, 10 N.Y.3d 358 (N.Y. 2008) [*PLN*, July 2011, p.45] and a companion case, *People v. Sparber*, 10 N.Y.3d 457 (N.Y. 2008).

Just two weeks after the decision in *Garner*, Moulton's parole was revoked on May 12, 2008 for violating the conditions of his DOCS-imposed PRS, despite his attorney's argument that the PRS term was a nullity.

Moulton was sentenced to 11 months in prison following his parole revocation but released in October 2008 after a state court granted his habeas corpus petition. He then filed suit for false imprisonment and mali-

cious prosecution, seeking damages for his incarceration due to violations of the PRS. The trial court granted the state's motion to dismiss the action.

The Appellate Division reversed, holding that when Moulton's "post-*Garner* parole revocation hearing was held nearly two weeks after DOCS-imposed PRS was categorically declared invalid in this state, [DOCS] did not have the 'privilege' to ignore that mandate, or to find him to be in violation of any invalid PRS term or to resentence him to the remainder of his term." Accordingly, "after *Garner*, [Moulton] was held without justification."

The appellate court noted that "Even if the arrest warrant based upon claimant's violation of PRS were lawful, the validity and lawfulness of that detention evaporated in the wake of *Garner*." See: *Moulton v. New York*, 114 A.D.3d 115, 977 N.Y.S.2d 797 (N.Y. App. Div. 3d Dep't 2013). ■

# SPORTZZBUZZ

(pronounced SPORTS-BUZZ!)

THE OFFICIAL PROVIDER OF SPORTS SCORES, LINES, AND MUCH MORE FOR FEDERAL INMATES.

GET UP-TO-DATE SPORTS INFORMATION SENT DIRECTLY TO YOUR CORRLINKS EMAIL FOR ONLY

## \$5 / MONTH\*



ADD [INFO@SPORTZZBUZZ.COM](mailto:INFO@SPORTZZBUZZ.COM) TO YOUR CORRLINKS EMAIL

SUBSCRIPTION LIST FOR MORE INFORMATION AND A FREE SAMPLE!

\*\$5 MONTHLY RATE AVAILABLE ONLY ON 12 MONTH SUBSCRIPTION

FANTASY FOOTBALL STATS AVAILABLE FOR A SMALL ADDITIONAL FEE

# **\$690,000 Settlement in HRDC Suit Over Death of Prisoner's Baby at CCA Jail**

*by Derek Gilna*

**I**N AUGUST 2014, CORRECTIONS CORPORATION of America (CCA), the nation's largest for-profit prison firm, settled a federal lawsuit filed by PLN's parent organization, the Human Rights Defense Center (HRDC), on behalf of a former prisoner held at the CCA-operated Silverdale Detention Facility – a county jail in Chattanooga, Tennessee. The suit alleged deliberate indifference in connection with CCA staff's handling of the prisoner's pregnancy, resulting in the death of her baby.

The settlement, executed by the parties on August 9, 2014, included the payment of \$690,000 to former prisoner Countess Clemons, who was 18 years old and pregnant when she was housed at Silverdale in November 2010 and went into premature labor. She was serving a misdemeanor sentence at the time and had no felony record. It was her first pregnancy.

In her complaint, Clemons alleged that CCA had violated her rights “under the First, Eighth, and Fourteenth Amendments of the United States Constitution and the laws of Tennessee when they knowingly and with deliberate indifference ... denied her and her child reasonable medical treatment for serious medical conditions, thereby causing her extensive physical and emotional pain and suffering and the death of her son.”

Although CCA's own institutional policy specifically notes that “incarcerated females have a high percentage of increased-risk pregnancies,” staff at Silverdale did not provide adequate medical care when Clemons experienced premature labor.

At around 5:00pm on November 19, 2010, when Clemons was approximately five months pregnant, she and several other prisoners notified CCA Officer Badger that Clemons was having severe abdominal pain and vaginal bleeding. There was a delay before she was able to see a nurse, who was busy distributing medication.

When Clemons finally saw CCA nurse Teresa Smith several hours later, after 7:00pm, she was clearly in great pain, unable to sit in a chair and had to lie down on the floor due to her discomfort. Nurse

Smith received permission from an off-site doctor to have Clemons taken to a hospital emergency room, and entered an order to that effect at 7:43pm.

However, Clemons was instead taken by wheelchair to a cell in an intake processing area at the CCA jail. The cell had a bare “bench” with no mattress. She was left in the cell for over two hours, during which time she began having contractions, bled heavily from her vagina, vomited and pleaded for help.

She was told by another CCA staff member, Officer Garcia, that she had to wait because it was “count time” and because various “codes” had been called at the facility.

Clemons' pants were soaked as a result of her water breaking and bleeding, and a CCA employee brought her another pair of pants. According to a prisoner later tasked with cleaning the intake cell, the cell's floor was covered in blood.

After several hours, Nurse Smith realized that Clemons had not yet been taken to the hospital as ordered. An ambulance was summoned and she was transported to Erlanger Hospital. Despite the efforts of hospital staff, it was too late to save her baby, Roland LeBron Clemons, who was born, lived just over an hour and then died. The state issued a certificate of live birth.

According to Erlanger's medical records, Clemons did not arrive at the hospital until 10:32pm – more than five hours after she first sought help from CCA staff. An Erlanger physician indicated that had she made it to the hospital earlier, they might have been able to save her baby's life.

However, Clemons' traumatic experience was not yet over. CCA officers initially refused to let her call her family from the hospital to inform them about the death of her baby, but hospital staff insisted and she was finally allowed to make a call. She was then returned to Silverdale handcuffed, shackled and with a waist chain and black box. A CCA counselor asked her if she “blamed God” for the death of her baby; Clemons replied that she blamed CCA.

Following her return to Silverdale on

November 20, 2010, she filed an informal grievance noting the delay in seeing a nurse, her vaginal bleeding and the fact that Officer Garcia had refused to help her because it was count time. The response to the grievance indicated that there was video footage of the events of November 19; however, CCA staff said no changes would be made in the jail's policies.

Clemons was released on furlough to attend her baby's funeral and retained the Human Rights Defense Center to represent her in a wrongful death lawsuit against CCA. HRDC sent a letter to the company, demanding that CCA preserve evidence related to the incident, including any videotape. HRDC also arranged for a grief counselor to meet with Clemons at Silverdale while she served the remainder of her sentence. She was released in April 2011, and HRDC filed lawsuits in both state and federal court in Chattanooga, Tennessee on November 17, 2011.

CCA later admitted that it had preserved the wrong video – saving the tape from November 18 instead of the 19th – and had destroyed the latter tape despite HRDC's letter to retain evidence in the case.

Clemons filed for sanctions, alleging that CCA was negligent in failing to preserve the correct video. CCA argued the destruction of the video was inadvertent, since it customarily only retains the footage for 90 days, at which time it tapes over the video, and a part-time employee had mistakenly copied the footage from the wrong date. Assistant Warden Michael T. Quinn failed to ensure the correct video had been kept.

After reviewing the pleadings, U.S. District Court Judge Curtis L. Collier held on July 14, 2014 that the destruction of the video constituted gross negligence which caused a “significant burden ... on Plaintiffs,” and agreed that attorney fees and costs were an appropriate sanction. The judge also ruled that a “mandatory inference instruction” would be given to the jury at the scheduled trial, finding that “[s]uch a sanction is appropriate to account for the culpability of CCA and remedy the

prejudice to Plaintiffs.” Accordingly, the jury would be instructed that the missing video footage would have been unfavorable to the company.

CCA agreed to settle the lawsuit the following month for \$690,000, inclusive of attorney fees and costs, after protracted litigation, extensive discovery, numerous depositions and the retention of medical experts. Twenty-two other female prisoners at Silverdale had provided statements in support of Clemons regarding the events of November 19, 2010.

Unfortunately, the death of Clemons’ newborn son was not the first time a pregnant prisoner had been denied medical care at a CCA facility, nor would it be the last.

In 2005, Jennifer Bozeman, 26, gave birth in the infirmary at the CCA-operated Bay County Jail in Florida after complaining of labor pains for over four hours. Her baby was airlifted to a hospital, where it was treated for birth defects. CCA subsequently released a 32-page report that documented mistakes and policy violations the night that Bozeman went into labor. [See: *PLN*, July 2006, p.1].

Meredith Manning, 23, gave birth during her incarceration at the CCA-run Metro-Davidson County Detention Facility in Nashville, Tennessee in 2004. She was reportedly left bleeding for three days in a solitary cell and ignored by CCA staff. Her baby was born after she was finally taken to a hospital, and lived for

only three hours. [See: *PLN*, Feb. 2006, p.1]. Manning filed suit, and a former CCA nurse filed an affidavit on her behalf. The case settled for \$250,000. See: *Manning v. CCA*, Third Circuit Court for Davidson County, Tennessee, Civil Action No. 05C-2608.

Rosalyn Bradford, 23, suffered from an undiagnosed ectopic pregnancy at the Silverdale Detention Facility in 1987; according to news reports she was left screaming in pain in her cell for almost 12 hours before being taken to a hospital, where she died. [See: *PLN*, Feb. 1993, p.2].

And in June 2012, Autumn Miller, a prisoner at the Dawson State Jail in Texas, gave birth in a toilet at the facility to a baby girl, Gracie, who died four days later. [See: *PLN*, July 2013, p.38].

Thus, including Countess Clemons, there are at least five known cases of pregnant prisoners being denied adequate medical care at CCA facilities, resulting in the death of one prisoner and four of their babies.

Private prison operators such as CCA, which confine approximately 8% of all state

and federal prisoners in the United States, have often been accused of understaffing, inadequately training their employees and restricting prisoners’ access to necessary medical treatment as a means of cutting costs in order to increase profits.

Clemons was represented by HRDC general counsel Lance Weber, Memphis, Tennessee attorney Andy C. Clarke and Arkansas attorney Luther Sutter. See: *Clemons v. Corrections Corporation of America*, U.S.D.C. (E.D. Tenn.), Case No. 1:11-cv-00339-CLC-WBC. ■

## TYPING

**SERVICES**  
Provided since 1998

**Specifically designed, with special rates for the incarcerated person.**

**Black / Color Printing and Copying**

**SEND A SASE FOR A “FREE” PRICE LIST AND MORE INFORMATION TO:**

**LET MY FINGERS DO YOUR TYPING**

**Sandra Z. Thomas (dba)**

**P O Box 4178**

**Winter Park, Florida 32793-4178**

**Phone: 407-579-5563**

**Special Offer: \$2.00 off first order.**

**Special offer void after: 12/31/2015**

## WELCOME TO KRASNYA BABES & KRASNYA STUDS WORLD

TENS OF THOUSANDS OF THE HOTTEST AND MOST SCANDALOUS BABES & DUDES FOUND ON THE PLANET. EACH CATALOG PAGE HAS 120 BEAUTIFUL GIRLS OR BOYS POSING JUST FOR YOU! ORDER ONE CATALOG PAGE FOR ONLY \$4.50 OR FOR 10 U.S. FOREVER STAMPS WITH AN SASE ENCLOSED. WE WILL SEND YOU VOLUME ONE. EACH ADDITIONAL VOLUME THE SAME PRICE! WE ARE MORE THAN HAPPY TO ANSWER E-MAIL INQUIRES HOWEVER, DUE TO MAILING COST AT \$0.49 CENTS A LETTER, PLEASE ENCLOSE AN SASE WITH YOUR QUESTIONS, OTHERWISE NO REPLIES!

WHAT ABOUT OUR PRICES AND POLICIES

COLOR PRINTS ON 4x6 GLOSSY PHOTO PAPER AS LOW AS \$0.35 CENTS PER PRINT ON ORDERS OVER 500 SHIPPED ACCORDING TO POLICY:

25 PICTURES PER ENVELOPE EVERY 24 HOURS. S&H \$2.00 PER ENVELOPE.

\*\*\*\*\*METHOD OF PAYMENT\*\*\*\*\*  
U.S. POSTAL SERVICE MONEY ORDERS-STATE & FEDERAL CORRECTIONAL INSTITUTIONAL CHECKS PAYABLE ONLY TO: KRASNYA L.L.C.

OUR SEASONAL SPECIALS MEAN A KICKOFF OF SAVINGS!

### \$24.95 S&H FREE

FOR GRAB BAG OF 50 PHOTOS FROM ALL OUR CATALOGS SPECIFY RACE AND MAIN AREA OF YOUR INTERESTS WE WILL PICK SELECTION FOR YOU BONUS 1 COLOR CATALOG PAGE OF 120 BABES (NUDE OR BOP-FRIENDLY)

3 BRAND NEW FLAT BOOKS OF 20 U.S. FOREVER STAMPS FOR GRAB BAG OF 45 PHOTOS FROM ALL OUR CATALOGS, SPECIFY RACE AND MAIN AREA OF YOUR INTERESTS WE WILL PICK SELECTION FOR YOU BONUS 1 COLOR CATALOG PAGE OF 120 (BABES OR STUDS-NUDE OR BOP-FRIENDLY) PLEASE INCLUDE 6 FOREVER STAMPS WITH YOUR ORDER FOR S&H

KRASNYA BABES HAS SPRUNG SALE! FREE SAMPLE CATALOG FROM KRASNYA! 120 BABES IN EACH CATALOG ENCLOSE ONE SASE WITH TWO FIRST CLASS STAMPS! 1 CATALOG PER CUSTOMER PLEASE SPECIFY MALE OR FEMALE BABES NUDE OR BOP-FRIENDLY

FOR KRASNYA CLIENTS WHO WORK THE YARDS; HAVE WE GOT A GREAT OPPORTUNITY FOR YOU...

MR. HUSTLE GRAB BAG BARGAIN DAYS ONLY \$0.25 CENTS PER BABE/PRINT 5 GRAB BAG MINIMUM PURCHASE REQUIRED \$2.00 SHIPPING AND HANDLING PER BAG 25 AWESOME BABES PER BAG AT ONLY \$6.25 YOU MUST BUY AT LEAST 5 GRAB BAGS THIS\*\*\*GRAB BAG BARGAIN\*\*\* IS NOT GOING TO BE OFFERED AGAIN THIS YEAR. SO STOCK UP NOW!

AS YOU KNOW YOU GET AN ARRAY OF 25 GORGEOUS BABES YOU CAN ONLY CHOOSE EITHER MALES OR FEMALES. ALL NUDES OR BOP SAFE YOU MAY WANT TO SIT DOWN FOR THIS BONUS BARGAIN! OUR BABES CATALOGS SPECIAL OF THE DECADE — 5 COLOR CATALOGS FOR \$6.00 — — 10 COLOR CATALOGS FOR \$12.00 — — 15 COLOR CATALOGS FOR \$18.00 — — 20 COLOR CATALOGS FOR \$24.00 — OUR CATALOGS SPECIAL AVAILABLE WHEN YOU PURCHASE THE 5 GRAB BAG MINIMUM! THIS PRICE INCLUDES FREE SHIPPING ON THE CATALOGS BECAUSE OF SHIPPING TERMS ALL CATALOGS SOLD IN MULTIPLES OF 5 FOR \$6.00 ONLY. YOU CHOOSE EITHER MALE OR FEMALE CATALOGS AND IF YOU WANT NUDE OR BOP SAFE!!

**KRASNYA L.L.C. P.O.BOX 32082, BALTIMORE, MD 21282**

EMAIL & CORRLINKS REQUESTS ACCEPTED AT:

**KRASNYABABES@HOTMAIL.COM**

## Corcoran Sun

Full Color Prison Yard Monthly  
News • Entertainment • Resources

**3 Month Special Subscription**

**\$5 or 20 FCS Stamps**

**NOW 20 PAGES**

Expanded full color format with exciting episodes of thrilling novels and sexy pics. Many how-to articles on writing, art, music and health. Filled with entertainment: puzzles, trivia, jokes, poetry... Submit your writing, art, poetry etc. See your submission, name and contact info in print.

Special 6-Issue Subscription (\$10 or 40 FCS stamps)

Special Year Subscription (\$20 or 80 FCS stamps)

NEW Books/Sheets/Strips ONLY No singles on special please

**Freebird Publishers**

Box 541, North Dighton, MA 02764

[www.FreebirdPublishers.com](http://www.FreebirdPublishers.com)

[Diane@FreebirdPublishers.com](mailto:Diane@FreebirdPublishers.com)



# Despite Reforms, Shackling of Pregnant Prisoners Persists

**I**N 2011, VALERIE NABORS WAS SERVING a sentence at Nevada's Florence McClure Women's Correctional Center in Las Vegas for stealing more than \$250 in casino chips. She was pregnant and went into labor while incarcerated. Nabors was handcuffed and taken to an ambulance where guards shackled her ankles together, even though Nevada had previously outlawed the use of restraints on pregnant prisoners during labor and delivery.

Guards refused to remove the shackles when an ambulance supervisor protested, and again at the hospital when a nurse questioned their use. Finally, the guards complied after a delivery room nurse insisted the restraints be removed, and Nabors underwent an emergency cesarean section. Within 10 minutes of the surgery, however, guards again shackled Nabors' ankles and chained her to the bed.

During the ordeal, Nabors suffered a separation of her pubic bones and several pulled muscles in her groin, which her physician determined were a direct result of the restraints. "We were shocked," said Staci Pratt of the ACLU of Nevada. "And it takes a lot to shock an ACLU attorney."

After suing the Nevada Department of Corrections, the state paid Nabors a \$130,000 settlement in January 2014. See: *Nabors v. Nevada DOC*, U.S.D.C. (D. Nev.), Case No. 2:12-cv-01044-LRH-VCF. Two months later the Nevada Board of State Prison Commissioners adopted new rules, including training requirements for guards and oversight regulations.

Unfortunately, Nabors' experience is not an isolated one.

"Pregnant women are the most vulnerable and the least threatening in the prison system and should rarely, if ever, be restrained," noted Alicia M. Walters, a reproductive justice advocate with the ACLU of Northern California. Yet pregnant prisoners in 29 states can be shackled to their hospital beds during childbirth, even when confined for only immigration-related offenses. [See: *PLN*, Sept. 2012, p.14].

According to the U.S. Department of Justice's Bureau of Justice Statistics, approximately 40,000 pregnant women are sentenced to prison annually. Many are serving time for non-violent crimes and pose little flight risk, yet most are shackled during childbirth.

"Just because they may be arrested for a nonviolent offense does not mean that's going to match their behavior," declared Beth Arthur, president of the Virginia Sheriffs' Association.

Those in the medical community generally agree that shackling pregnant prisoners creates a risk for both mother and child.

"Pregnant women in correctional facilities are more likely to experience miscarriage, preeclampsia, pre-term birth, and low birth weight infants, all of which seriously jeopardize the health of the mother and, in many cases, her newborn," stated California Assemblywoman Toni Atkins. "Shackling increases these risks by causing women to fall and by making emergency medical care more difficult to administer."

In a case arising out of Arkansas, in 2009 the 8th Circuit Court of Appeals held there is a clearly established right for pregnant prisoners to not be shackled while in labor. See: *Nelson v. Corr. Med. Servs.*, 583 F.3d 522 (8th Cir. 2009) (en banc) [*PLN*, April 2010, p.20].

A 2010 American Medical Association resolution deemed the practice "barbaric," unsafe and "medically hazardous," and banned the use of restraints during labor or delivery. [See: *PLN*, Dec. 2010, p.48]. And the American Correctional Association encouraged states to adopt written policies prohibiting the use of restraints on pregnant prisoners. Not all states have followed those recommendations, however.

"The whole attitude of law enforcement officers [is] that an inmate is an inmate, and every inmate is a flight and safety risk," said Virginia lawmaker Patrick A. Hope, who twice tried unsuccessfully to introduce bills to ban the shackling of pregnant prisoners. His 2011 bill did not even make it to a vote.

After legislative proposals failed, the Virginia Board of Corrections amended its rules on November 14, 2012 to restrict the use of restraints on pregnant prisoners. But advocates said a law is still needed to require prison staff to publicly report when prisoners are restrained under exceptions to the new rules.

As of July 2014, only 21 states had passed legislation to limit or ban the shackling of pregnant prisoners during labor and delivery, while a federal statute applies to

the Bureau of Prisons.

"It blows my mind that I have to sign a law for that," said Massachusetts Governor Deval Patrick on May 19, 2014, after his signature made Massachusetts the most recent state to restrict placing restraints on pregnant prisoners.

The law, which took effect immediately, has been hailed as providing the most comprehensive health and safety standards for imprisoned pregnant women to date; in addition to limiting the kinds of restraints that prison guards can use and the situations in which they can use them, it requires that pregnant prisoners always be transported in vehicles with seatbelts, and mandates that such prisoners be provided with proper medical care, nutrition and basic necessities such as maternity clothes.

Massachusetts was the third state to adopt anti-shackling legislation in 2014. A week earlier, Minnesota Governor Mark Dayton signed a similar bill into law, and in April 2014 an anti-shackling bill was adopted in Maryland. Anti-shackling legislation was also introduced in Iowa, New Jersey and the District of Columbia this year. Yet even in some states that outlaw or limit restraints, pregnant prisoners are still being shackled.

"Correctional institutions are incredibly opaque. It's often very difficult to get information on what's happening," said Gavi Wolfe, legislative counsel for the ACLU of Massachusetts. "They don't rigorously monitor the use of restraints, especially when it's been a part of their practice for a long time, and one they haven't thought to scrutinize. Our prison culture has gone so far in the direction of all practices being OK in the name of security – even when security isn't an issue – that we have, in general, lost sight of humanity in the face of reflexive prison policies."

California is estimated to have the nation's third-largest population of women in prison, putting the state at the forefront of this issue.

"In 2005, California became one of the first states to prohibit shackling of incarcerated pregnant women during labor, delivery, and recovery after childbirth," wrote Walters, with the ACLU of Northern California. On September 28, 2012, the state went further by enacting one of the nation's first laws that completely bans



the shackling of pregnant prisoners (Penal Code § 3407).

However, a survey conducted by Legal Services for Prisoners with Children (LSPC), a San Francisco-based advocacy group, determined that while 21 California counties are in full compliance with the new law, almost two-thirds are not.

"We see it as very promising that dozens of counties have already taken steps to comply with this law," LSPC policy director Jesse Stout said upon the survey's release in February 2014. "But we still see a need for more work, since there are still dozens of counties that have compliance issues that do not fully follow these very basic health and safety protections for pregnant women."

The California statute prohibits using leg irons, waist chains or handcuffs behind the body on pregnant prisoners; it further states that they should be restrained in alternative ways – such as handcuffed in front of their bodies – only if absolutely necessary for the safety of the public or other prisoners. Finally, the law removes from prison guards the final say on removing restraints, and instead gives that authority to medical professionals.

In a statement, the California Board of State and Community Corrections responded to the LSPC survey by questioning its methodology. "It's important to note that the report cites no evidence that women are being shackled contrary to law," the statement said. "The question it raises concerns whether counties are compliant in developing written policies and are notifying inmates of those policies."

Called a "victory" for incarcerated women, the California law is actually quite rare. Advocacy groups are lobbying for federal standards and shackling bans in the states that still authorize the practice, but say the results have been less than encouraging.

The non-profit Correctional Association of New York, which monitors conditions in New York prisons, noted that shackling remains commonplace despite a 2009 state law. The group surveyed 27 women who gave birth in prison since the law was enacted and found that 23 reported having been shackled just before, during or after delivery.

"The law was put in place because New York State recognized that these practices

are an affront to human rights and decency," said Tamar Kraft-Stolar, who directs the association's Women in Prison Project. "The fact that it's being routinely violated is egregious."

In 1999, Illinois became the first state in the nation to ban the shackling of prisoners who were in labor or being transported to a hospital. Yet scores of women have come forward with stories of restraints being removed only in the moments before delivery, or not at all.

In 2007, 18-year-old Cora Fletcher was eight months pregnant when she was booked into the Cook County Jail in Chicago for missing a court date on a retail theft charge. A prenatal checkup detected no fetal heartbeat, so Fletcher was sent to a hospital where a medical team attempted to induce labor. Both her hands and feet were shackled to the bed until she went into labor, then only one hand and foot were released as she gave birth to her stillborn child.

Fletcher was one of 80 women who filed a class-action lawsuit against Cook County, alleging that they were restrained during in-custody births between September 2007 and June 2010.

## Stamps for **CASH!**

*Great Goods will buy your stamps!*

**70%** of Face Value: Complete books, sheets or rolls of Forever Stamps and Global Forever Stamps

**65%** of Face Value: Complete books, sheets or rolls of 49-cent stamps

**60%** of Face Value: Complete books or sheets of high denomination stamps (higher than 49-cent)

**Payment sent within 24 hours of receipt.**

**W**E WILL SEND your funds as a money order, electronic payment to anywhere you designate. Great Goods can also send payment to an approved package vendor. Please provide complete name and address of where to send your funds. Also include any required forms or special instructions.

Minimum money order of \$20. • No quantity of stamps too big. • No taped or stapled stamps. • Used, damaged, torn stamps not accepted and cannot be returned. • Stamps **MUST** be on original postal backing. • Only new stamps accepted.

• No singles or partials will be accepted and they cannot be returned.

## **GREAT GOODS**

PO Box 2027, Bloomington IN 47402

greatgoods2027@gmail.com

STAMPS © USPS. ALL RIGHTS RESERVED.

## Shackling Pregnant Prisoners (cont.)

In April 2010, the county amended its policies to provide that pregnant prisoners could be handcuffed but that shackles and belly chains could no longer be used. The policy was changed again in February 2011, dictating that restraints should not be used at all unless the prisoner poses a security or flight risk. Similar legislation was signed into law in January 2012 by Illinois Governor Pat Quinn.

On May 22, 2012, U.S. District Court Judge Amy St. Eve preliminarily approved a \$4.1 million settlement in the class-action suit against Cook County, providing each plaintiff with an average of \$35,000, according to attorney Thomas Morrissey. He said the more important victory, however, was the fact that “we actually stopped the practice” of shackling pregnant prisoners at the Cook County jail.

Yet despite the class-action lawsuit, settlement and subsequent reforms, the defendants admitted no wrongdoing and said they settled the case only for the sake of expediency. [See: *PLN*, March 2013, p.31].

“This settlement is probably the most fair and efficient way to end this lawsuit and to prevent further cost to taxpayers,” said Cook County Sheriff’s Office spokesman Frank Bilecki. “The County sheriff’s office strictly prohibits the use of security restraints on pregnant women in custody absent of unusual circumstances,” he added, and boasted that Cook County’s treatment of female detainees is the “most progressive in the nation” – but without acknowledging that litigation had compelled reforms.

Such lawsuits are critical to ensure that prisons and jails comply with anti-shackling laws, according to Danyell Williams, a former midwife for prisoners in Philadelphia. “These laws were passed and everybody patted themselves on the back for doing what was right and human and then went on about their business,” she said. “But there’s no policing entity that’s really going to hold these institutions responsible.”

Similar horror stories and lawsuits have been reported across the nation, most notably in Arizona’s Maricopa County. “It doesn’t surprise me that these cases have gotten a lot of media attention,” said the ACLU’s Walters. “A lot of organizations are watching that county closely because of Sheriff Joe [Arpaio],” who is well known for

his abusive treatment of prisoners.

“Women and unborn children should be treated with basic human dignity,” observed Heather Rice, director of the U.S. Prisons and Policy Program for the National Religious Campaign Against Torture. “No woman who is in one of the most precarious situations and circumstances ... should have to unnecessarily go through being restrained.”

In the majority of states that have

not adopted anti-shackling laws, however, they do. ■

Sources: *www.ibtimes.com*, *www.washingtonpost.com*, *ACLU of Virginia press release* (Nov. 19, 2012), *Chicago Tribune*, *www.buffingtonpost.com*, *www.abcnews.go.com*, *www.guardian.co.uk*, *www.care2.com*, *www.nytimes.com*, *http://nationinside.org*, *www.kqed.org*, *www.correctionalassociation.org*, *www.cosmopolitan.com*

## Disabled California Juvenile Detainees Entitled to Special Education Services in Jail

by Mark Wilson

THE CALIFORNIA SUPREME COURT HELD on December 12, 2013 that state law requires disabled juvenile offenders to continue receiving special education services while incarcerated.

Under California Education Code § 56041, juveniles between 18 and 22 years old who suffer from learning disabilities, speech or language impairments are entitled to receive special education and related services.

Michael Garcia became eligible for special education services in the second grade, when he was identified as having learning deficiencies and speech and language impairments. Sometime after his sixteenth birthday, Garcia was arrested on felony charges and detained in juvenile hall. While there he received special education services through the Los Angeles County Office of Education.

When he turned eighteen, Garcia was transferred to the Los Angeles County Jail (LACJ) in June 2008, to await trial. Although he was still eligible for special education services, none were offered at the jail because no education agency took responsibility for providing those services.

The Disability Rights Legal Center (DRLC) and co-counsel Milbank, Tweed, Hadley & McCloy, LLP filed suit in federal court, challenging the jail’s failure to provide special education services to Garcia and other qualified juvenile detainees.

In May 2010 the district court held that under § 56041, the Los Angeles Unified School District (LAUSD) was responsible for providing special education services to Garcia and other LACJ juvenile detainees. LAUSD appealed and the Ninth Circuit issued a stay, asking the California

Supreme Court to decide whether § 56041 applies “to children who are incarcerated in county jails.” See: *LAUSD v. Garcia*, 669 F.3d 956 (9th Cir. 2012).

The Supreme Court agreed to decide the issue. “Although section 56041 does not by its terms specifically address county jail inmates,” the Court concluded that “the statutory language is broad enough to encompass special education programs for eligible county jail inmates between the ages of 18 and 22 years.” See: *LAUSD v. Garcia*, 58 Cal.4th 175, 314 P.3d 767 (Cal. 2013).

“With this ruling by the California Supreme Court, we can proceed with the class action to develop a systemic resolution that will ensure that all eligible students in LA County Jails are provided the special education and related services to which they are entitled under state and federal law,” said Milbank special counsel Delilah Vinzon.

“Michael is just one of many students with disabilities in a custodial setting who needs special education services – these services help Michael, and others like him, be successful in life and obtain gainful employment upon release,” added DRLC attorney Anna Rivera. “It’s through education that we break the cycle of recidivism.”

Following the state Supreme Court’s decision, the Ninth Circuit Court of Appeals affirmed the district court on January 28, 2014, holding that “the Los Angeles Unified School District was responsible for providing special education services to Michael Garcia” while he was held at the county jail. See: *LAUSD v. Garcia*, 741 F.3d 922 (9th Cir. 2014). ■

Additional source: *DRLC press release* (Dec. 17, 2013)



## An Open letter to Prisoners in North America

Dear Sir/Madam,

It sucks to be locked up during the Holidays and we encourage you to hang in there and improve yourself in every way that you can.

We wanted to let you know that we are going to include one free magazine subscription of your choice from the list on the back of this letter **at no charge to you** with every paid order. You will find a coupon in this issue of PLN which you can mail in for one free subscription. One per prisoner ONLY. This free subscription needs no purchase but there is a limit to one per North American Inmate. This special runs October 2014 through January 2015 ONLY.

We are doing this to let you know that our hearts are with you during the holidays and to help you get through this difficult time.

Our friends with Prison Legal News want you to know that we are all dedicated to keeping your rights to quality reading material as it should be. We are going to protect First Amendment Rights with all our might!

Please enjoy your free subscription from your friends at PLN and IMS!

Best Regards

RS

Director

Inmate Magazine Service, Inc.

PS: IMS has donated over 1,000,000 Magazine Subscriptions to North American Prisoners over the past 4 years!

Coupon: To receive your one free magazine subscription, contact IMS at the address below and mention this special offer in *PLN*! See the next page for a list of available magazines.



Stay in touch with a good Magazine!  
Get 6 Full One Year Subscriptions

**ONLY \$20!**  
+ \$5.99 p&h

Check your 5 magazines and underline three backup choices (in case of unavailability)

**"BEST DEAL ON THE POUND!"**

- ☐ THE ATLANTIC (10)
- ☐ BON APPETIT (12)
- ☐ WEIGHT WATCHERS (6)
- ☐ SELF (12)
- ☐ BACKPACKER (9)
- ☐ OUTSIDE (12)
- ☐ CHARISMA (12)
- ☐ MINISTRY TODAY (6)
- ☐ MIDWEST LIVING (6)
- ☐ WOOD (7)
- ☐ OLD HOUSE JOURNAL (8)
- ☐ YOGA JOURNAL (9)
- ☐ LOG HOME LIVING (9)
- ☐ FREESKIER (6)
- ☐ SNOWBOARD (4)
- ☐ DIABETES SELF MANAGEMENT (6)
- ☐ NYLON (10)
- ☐ TIMBER HOME LIVING (6)
- ☐ RED BULLETIN MAGAZINE (12)
- ☐ LOW COST COOKING (1)
- ☐ MEXICAN FIESTA (1)
- ☐ ARTHRITIS SELF MANAGEMENT (6)
- ☐ BOATING (10)
- ☐ BOATING WORLD (9)
- ☐ BOWHUNT AMERICA (6)
- ☐ CAR & DRIVER (12)
- ☐ COUNTRY LIVING (10)
- ☐ DIGITAL PHOTO (7)

- ☐ DIRT RIDER (12)
- ☐ ELLE DECOR (10)
- ☐ FAST COMPANY (10)
- ☐ GLAMOUR (12)
- ☐ GOLF TIPS (5)
- ☐ GOLF WEEK (38)
- ☐ HOT BIKE (12)
- ☐ INC (12)
- ☐ LIFE EXTENSION (13)
- ☐ MARIE CLAIRE (12)
- ☐ MOTORCYCLIST (12)
- ☐ NYLON GUYS (6)
- ☐ OUTDOOR PHOTOGRAPHER (11)
- ☐ PLANE & PILOT-NEW ONLY (12)
- ☐ PREDATOR XTREME (6)
- ☐ SCHOLASTIC PARENT & CHILD (8)
- ☐ SKI (6)
- ☐ SLAM (10)
- ☐ SPORT RIDER (10)
- ☐ UPTOWN MAGAZINE (6)
- ☐ WHITETAIL JOURNAL (6)
- ☐ WIRED (12)
- ☐ ESPN (26)
- ☐ ALLURE (12)
- ☐ MEN'S FITNESS (10)
- ☐ NATURAL HEALTH (6)
- ☐ O (OPRAH) (12)
- ☐ OK! MAGAZINE (52)

- ☐ AMERICAN PHOTO (6)
- ☐ ARTHRITIS TODAY (6)
- ☐ AUTOMOBILE (12)
- ☐ BETTER HOMES & GARDENS (12)
- ☐ BLACK ENTERPRISE (12)
- ☐ BOWHUNTING WORLD (9)
- ☐ BRIDAL GUIDE (6)
- ☐ CONDE NAST TRAVELER (12)
- ☐ COSMOPOLITAN (12)
- ☐ CRUISING WORLD (12)
- ☐ CYCLE WORLD (12)
- ☐ DETAILS (10)
- ☐ EATING WELL (6)
- ☐ EBONY (12)
- ☐ ELLE (12)
- ☐ ENTREPRENEUR (12)
- ☐ ESQUIRE (10)
- ☐ EVERYDAY WITH RACHAEL RAY (10)
- ☐ FAMILY CIRCLE (12)
- ☐ FAMILY FUN (10)
- ☐ FIELD & STREAM (12)
- ☐ FITNESS (10)
- ☐ FLORIDA SPORT FISHING (6)
- ☐ FLYING (12)
- ☐ GOLF DIGEST (12)
- ☐ GOOD HOUSEKEEPING (12)
- ☐ HARPERS BAZAAR (10)
- ☐ INSTRUCTOR (6)

- ☐ ISLANDS (8)
- ☐ LATINA (10)
- ☐ LUCKY (10)
- ☐ MARLIN (8)
- ☐ MEN'S JOURNAL (12)
- ☐ MORE (10)
- ☐ MOTOR TREND (12)
- ☐ OUTDOOR LIFE (12)
- ☐ PARENTS (12)
- ☐ POPULAR PHOTOGRAPHY (12)
- ☐ POPULAR SCIENCE (12)
- ☐ REDBOOK (11)
- ☐ ROAD & TRACK (10)
- ☐ ROLLING STONE (26)
- ☐ SALT WATER SPORTSMAN (10)
- ☐ SAVEUR (9)
- ☐ SEVENTEEN (10)
- ☐ SHAPE (12)
- ☐ SIEMPRE MUJER (6)
- ☐ TEEN VOGUE (10)
- ☐ TENNIS (6)
- ☐ TOWN AND COUNTRY (10)
- ☐ TRANSWORLD MOTOCROSS (12)
- ☐ US WEEKLY (52)
- ☐ VERANDA (6)
- ☐ WOMAN'S DAY (12)
- ☐ WORKING MOTHER (6)
- ☐ YACHTING (12)

OK TO COPY

Check your Extra FREE Magazine Subscription

- ☐ ARTHRITIS TODAY (6)
- ☐ AUTOMOBILE (12)
- ☐ BLACK ENTERPRISE (12)
- ☐ DIRT RIDER (12)
- ☐ EBONY (12)
- ☐ ENTREPRENEUR (12)
- ☐ FAMILY CIRCLE (12)
- ☐ FAMILY FUN (10)
- ☐ FAST COMPANY (10)
- ☐ GLAMOUR (12)
- ☐ GOLF WEEK (38)
- ☐ INC (12)
- ☐ LATINA (10)
- ☐ MEN'S FITNESS (10)
- ☐ MEN'S JOURNAL (12)
- ☐ MOTOR TREND (12)
- ☐ MOTORCYCLIST (12)
- ☐ NATURAL HEALTH (6)
- ☐ NYLON (10)
- ☐ NYLON GUYS (6)
- ☐ OK! MAGAZINE (52)
- ☐ SHAPE (12)
- ☐ TENNIS (6)
- ☐ UPTOWN MAGAZINE (6)
- ☐ WIRED (12)

\* No Renewal

"Tell your Friends and Families!"

\*\*\*\*DUE TO PUBLISHER PROCESSING TIMES, WE WILL NOT UNDER ANY CIRCUMSTANCES CHECK WITH ANY PUBLISHER ABOUT THE STATUS OF ANY MAGAZINE SUBSCRIPTION UNTIL AFTER 90 DAYS HAVE PASSED FROM THE DATE OF PROCESSING YOUR ORDER! NO EXCEPTIONS!\*\*\*\*



**Inmate Magazine Service**

P.O. Box 2063, Fort Walton Beach, FL 32549  
www.InmateMagazineService.com

Name and Inmate # (please print, maximum 24 characters):			
Address:			
City:		State:	Zip:

Allow 6-8 weeks for delivery. Pay by Check, Money Order or **Order Online** and use Credit Card or PayPal. Keep Address Short!



Stay in touch with a good Magazine!  
Get 6 Full One Year Subscriptions

**ONLY \$20!**  
+ \$5.99 p&h

Check your 5 magazines and underline three backup choices (in case of unavailability)

**"BEST DEAL ON THE POUND!"**

- ☐ THE ATLANTIC (10)
- ☐ BON APPETIT (12)
- ☐ WEIGHT WATCHERS (6)
- ☐ SELF (12)
- ☐ BACKPACKER (9)
- ☐ OUTSIDE (12)
- ☐ CHARISMA (12)
- ☐ MINISTRY TODAY (6)
- ☐ MIDWEST LIVING (6)
- ☐ WOOD (7)
- ☐ OLD HOUSE JOURNAL (8)
- ☐ YOGA JOURNAL (9)
- ☐ LOG HOME LIVING (9)
- ☐ FREESKIER (6)
- ☐ SNOWBOARD (4)
- ☐ DIABETES SELF MANAGEMENT (6)
- ☐ NYLON (10)
- ☐ TIMBER HOME LIVING (6)
- ☐ RED BULLETIN MAGAZINE (12)
- ☐ LOW COST COOKING (1)
- ☐ MEXICAN FIESTA (1)
- ☐ ARTHRITIS SELF MANAGEMENT (6)
- ☐ BOATING (10)
- ☐ BOATING WORLD (9)
- ☐ BOWHUNT AMERICA (6)
- ☐ CAR & DRIVER (12)
- ☐ COUNTRY LIVING (10)
- ☐ DIGITAL PHOTO (7)

- ☐ DIRT RIDER (12)
- ☐ ELLE DECOR (10)
- ☐ FAST COMPANY (10)
- ☐ GLAMOUR (12)
- ☐ GOLF TIPS (5)
- ☐ GOLF WEEK (38)
- ☐ HOT BIKE (12)
- ☐ INC (12)
- ☐ LIFE EXTENSION (13)
- ☐ MARIE CLAIRE (12)
- ☐ MOTORCYCLIST (12)
- ☐ NYLON GUYS (6)
- ☐ OUTDOOR PHOTOGRAPHER (11)
- ☐ PLANE & PILOT-NEW ONLY (12)
- ☐ PREDATOR XTREME (6)
- ☐ SCHOLASTIC PARENT & CHILD (8)
- ☐ SKI (6)
- ☐ SLAM (10)
- ☐ SPORT RIDER (10)
- ☐ UPTOWN MAGAZINE (6)
- ☐ WHITETAIL JOURNAL (6)
- ☐ WIRED (12)
- ☐ ESPN (26)
- ☐ ALLURE (12)
- ☐ MEN'S FITNESS (10)
- ☐ NATURAL HEALTH (6)
- ☐ O (OPRAH) (12)
- ☐ OK! MAGAZINE (52)

- ☐ AMERICAN PHOTO (6)
- ☐ ARTHRITIS TODAY (6)
- ☐ AUTOMOBILE (12)
- ☐ BETTER HOMES & GARDENS (12)
- ☐ BLACK ENTERPRISE (12)
- ☐ BOWHUNTING WORLD (9)
- ☐ BRIDAL GUIDE (6)
- ☐ CONDE NAST TRAVELER (12)
- ☐ COSMOPOLITAN (12)
- ☐ CRUISING WORLD (12)
- ☐ CYCLE WORLD (12)
- ☐ DETAILS (10)
- ☐ EATING WELL (6)
- ☐ EBONY (12)
- ☐ ELLE (12)
- ☐ ENTREPRENEUR (12)
- ☐ ESQUIRE (10)
- ☐ EVERYDAY WITH RACHAEL RAY (10)
- ☐ FAMILY CIRCLE (12)
- ☐ FAMILY FUN (10)
- ☐ FIELD & STREAM (12)
- ☐ FITNESS (10)
- ☐ FLORIDA SPORT FISHING (6)
- ☐ FLYING (12)
- ☐ GOLF DIGEST (12)
- ☐ GOOD HOUSEKEEPING (12)
- ☐ HARPERS BAZAAR (10)
- ☐ INSTRUCTOR (6)

- ☐ ISLANDS (8)
- ☐ LATINA (10)
- ☐ LUCKY (10)
- ☐ MARLIN (8)
- ☐ MEN'S JOURNAL (12)
- ☐ MORE (10)
- ☐ MOTOR TREND (12)
- ☐ OUTDOOR LIFE (12)
- ☐ PARENTS (12)
- ☐ POPULAR PHOTOGRAPHY (12)
- ☐ POPULAR SCIENCE (12)
- ☐ REDBOOK (11)
- ☐ ROAD & TRACK (10)
- ☐ ROLLING STONE (26)
- ☐ SALT WATER SPORTSMAN (10)
- ☐ SAVEUR (9)
- ☐ SEVENTEEN (10)
- ☐ SHAPE (12)
- ☐ SIEMPRE MUJER (6)
- ☐ TEEN VOGUE (10)
- ☐ TENNIS (6)
- ☐ TOWN AND COUNTRY (10)
- ☐ TRANSWORLD MOTOCROSS (12)
- ☐ US WEEKLY (52)
- ☐ VERANDA (6)
- ☐ WOMAN'S DAY (12)
- ☐ WORKING MOTHER (6)
- ☐ YACHTING (12)

OK TO COPY

Check your Extra FREE Magazine Subscription

- ☐ ARTHRITIS TODAY (6)
- ☐ AUTOMOBILE (12)
- ☐ BLACK ENTERPRISE (12)
- ☐ DIRT RIDER (12)
- ☐ EBONY (12)
- ☐ ENTREPRENEUR (12)
- ☐ FAMILY CIRCLE (12)
- ☐ FAMILY FUN (10)
- ☐ FAST COMPANY (10)
- ☐ GLAMOUR (12)
- ☐ GOLF WEEK (38)
- ☐ INC (12)
- ☐ LATINA (10)
- ☐ MEN'S FITNESS (10)
- ☐ MEN'S JOURNAL (12)
- ☐ MOTOR TREND (12)
- ☐ MOTORCYCLIST (12)
- ☐ NATURAL HEALTH (6)
- ☐ NYLON (10)
- ☐ NYLON GUYS (6)
- ☐ OK! MAGAZINE (52)
- ☐ SHAPE (12)
- ☐ TENNIS (6)
- ☐ UPTOWN MAGAZINE (6)
- ☐ WIRED (12)

\* No Renewal

"Tell your Friends and Families!"

\*\*\*\*DUE TO PUBLISHER PROCESSING TIMES, WE WILL NOT UNDER ANY CIRCUMSTANCES CHECK WITH ANY PUBLISHER ABOUT THE STATUS OF ANY MAGAZINE SUBSCRIPTION UNTIL AFTER 90 DAYS HAVE PASSED FROM THE DATE OF PROCESSING YOUR ORDER! NO EXCEPTIONS!\*\*\*\*



**Inmate Magazine Service**

P.O. Box 2063, Fort Walton Beach, FL 32549  
www.InmateMagazineService.com

Name and Inmate # (please print, maximum 24 characters):			
Address:			
City:		State:	Zip:

Allow 6-8 weeks for delivery. Pay by Check, Money Order or **Order Online** and use Credit Card or PayPal. Keep Address Short!



# Former Florida Guard Accused of Workers' Comp Fraud Dies Before Trial

LESS THAN EIGHT WEEKS BEFORE A former Florida prison guard was scheduled to go to trial on charges of fraudulently collecting nearly \$3 million in workers' compensation, he died in a Tampa hospital. Doctors listed his cause of death as lung failure.

David Brownell, 48, left behind a wife who was furious with the state for what she contended was a deliberate effort to besmirch her husband's name and discredit the medical condition that eventually killed him.

Brownell was arrested in November 2012 on a felony insurance fraud charge. He had filed a workers' compensation claim in 1995 alleging that his exposure to rats and rat feces at the Glades Correctional Institution (GCI) caused him respiratory problems and a dependency on oxygen. Florida's Division of Risk Management paid him more than \$2.7 million over the next 17 years, including around \$563,000 in lost income.

Brownell made statements under oath about his disabilities. However, the Florida Department of Financial Services' Division of Insurance Fraud produced video footage taken over several years that indicated Brownell's condition appeared to be less severe than he had claimed. In the videos he was seen playing guitar in a band, attending a concert, driving and smoking cigarettes.

While Brownell could occasionally drive, play his guitar and attend concerts, the claim that he smoked cigarettes was a lie, said his widow, Candace Brownell, 55. "He never smoked a day in his life," she stated.

None of the videos showed Brownell wearing an oxygen mask, but Candace said her husband did not need to be on oxygen constantly. In fact, doctors had advised him to not use his oxygen tank all the time.

"They edited the [surveillance] tapes and only showed ones of him without oxygen," Candace complained. "Where's all the videotape of him with oxygen or throwing up in the front yard because he couldn't quite make it home – or all the trips to the hospital?"

Brownell made more than a dozen hospital visits over the past four years,

Candace said. Doctors had diagnosed her husband with a rare form of pneumonia and also found he suffered from idiopathic pulmonary fibrosis, or scarring of the lungs. Brownell was placed on a lung transplant list ten days before he died on October 16, 2013.

"We were saddened to hear of Mr. Brownell's passing and our sympathies are with his family," the Division of Insurance Fraud said in a written statement. "The investigation was never about whether he was ill or not, but rather the contrast between how he was representing his physical limitations to doctors and what he was actually capable of doing."

Candace Brownell was also angry that the state made it appear her husband had profited from his workers' compensation payments, most of which she said went to medical providers.

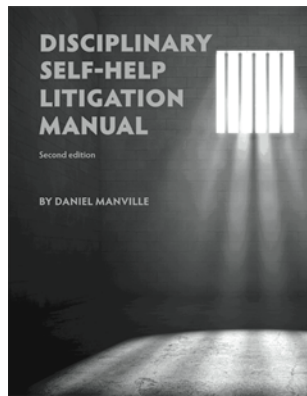
Brownell faced up to 30 years in prison and had been worried about his trial, which was scheduled for early

December 2013.

"He [had] a nerve stimulator in his back, a port installed in his chest, a feeding tube hanging out of his stomach," Candace stated. "How would you be able to convince a jury he was faking it?"

Brownell's workers' comp claim was similar to a lawsuit filed by then-GCI prisoner and *PLN* contributing writer David Reutter in 1994. Reutter alleged that GCI was infested with rats, and rat feces had possibly subjected him to Hantavirus, a respiratory disease. A state court judge denied his motion for a preliminary injunction despite a guard's testimony that he had been bitten by a rat when reaching for his lunch in a cabinet in the guards' station, resulting in the guard receiving workers' compensation for several weeks. ■

Sources: [www.claimsjournal.com](http://www.claimsjournal.com), *Sun-Sentinel*, [www.safetynewsalert.com](http://www.safetynewsalert.com), [www.tampabay.com](http://www.tampabay.com)



## ***Disciplinary Self-Help Litigation Manual, Second Edition, by Dan Manville***

By the co-author of the *Prisoners' Self-Help Litigation Manual*, this book provides detailed information about prisoners' rights in disciplinary hearings and how to enforce those rights in court.

Available in November 2014 from Prison Legal News Publishing. **\$49.95**, shipping included

### **Order by mail, phone or on-line.**

By: ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**Prison Legal News • PO Box 1151, Lake Worth, FL 33460**

**Tel. 561-360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)**

# Debtors' Prisons Prevail in Las Vegas, Thanks to Prosecutors and Casino Markers Law

by Derek Gilna

**A**NYONE WHO HAS EVER BEEN THREAT-ened with jail or actually locked up for passing a bad check or failing to pay a debt knows that so-called "debtors' prisons" are alive and well in the United States. [See: *PLN*, Nov. 2013, p.20]. But few states can match Nevada for pursuing criminal charges against people who owe money, especially to the state's powerful casino industry.

In Nevada, failure to pay "gambling markers" – loans that casinos make to patrons to encourage gambling – is considered the same as writing a bad check under NRS 205.130(1)(e). Further, state law presumes that the debtor is guilty until proven innocent.

But a California businessman is challenging those presumptions.

The Nevada Supreme Court is currently considering the appeal of Harel Zahavi, 53, who was convicted in 2011 on four felony counts of passing bad checks and sentenced to 12 to 34 months in prison on each count. His prison term was suspended and he was placed on probation and ordered to pay fines.

Zahavi, who once ran a thriving ice cream business in southern California, had been indicted on charges that he failed to repay \$384,000 in debts to four Las Vegas casinos that extended him gambling credit from October through December 2008.

According to testimony at his trial, Zahavi had a history of gambling – spending approximately \$50 million at Nevada casinos over a ten-year period, including \$8.3 million at one of the casinos involved in the bad debt charges.

Under Nevada law, casino markers have the same legal status as checks, giving casinos the right to withdraw the funds owed from the gambler's bank account. If the account contains insufficient funds (NSF) to cover the amount of the markers, the law presumes that the gambler intended to defraud the casino by not paying the debt, even if the bank account held sufficient funds to pay the markers at the time they were granted.

Zahavi's attorney, Matt Lay, argued

before the state's high court that the casinos issued gambling markers to his client even though they knew, or should have known, that he did not have sufficient funds in his bank account. They should never have issued Zahavi more credit, Lay maintained, and such credit is similar to short-term loans.

However, Clark County Chief District Attorney Bernard Zadrowski countered that casinos first check players' bank accounts and determine their average balances in recent months before they extend credit. He told the Nevada Supreme Court that casinos have "no affirmative duty to alert" the gambler that his or her account lacks funds before cashing the markers.

Under state law, when gamblers agree to take a marker, they stipulate that they have sufficient funds to pay the debt, Zadrowski argued. Casinos can cash markers at any agreed upon time, typically 30 days or less – though the time period may be longer.

Lay noted that one of the four casinos determined that Zahavi had \$27,000 in his bank account, but still extended him \$100,000 in markers. He said the other three casinos had not checked Zahavi's bank records for at least two months before granting him more credit.

As a result – and because the casinos failed to stop Zahavi from gambling – he could not be convicted of criminal fraud, Lay concluded.

Legal experts say the issues in the case run deeper than simply one gambler who was criminally prosecuted for running up unpaid gambling debts. The bigger picture, they claim, is that Las Vegas casinos use state law – and specifically the formidable power of the District Attorney's office – as a means of debt collection. Also, the D.A. is allowed to collect a 5-10% fee from the defendant in addition to any monetary settlement.

Under Nevada law, individuals who fail to pay casino markers typically face criminal prosecution under five statutes:

- Making False Statements to Obtain Benefits (NRS 616D.300), meaning a person lied about his ability to pay back

the marker because he knew he did not have enough cash, credit or collateral to cover it;

- Forgery (NRS 205.090), defined as using counterfeit records with the intent to defraud (charges of identity theft and misrepresentation of assets sometimes accompany a forgery charge);

- Obtaining Money by False Pretenses (NRS 205.380), or convincing someone to loan money based on trickery, such as forgery or making false statements;

- Crime of Bad Checks (NRS 205.130), which is defined as willfully passing a check with the knowledge that the account contains insufficient funds to cover the amount; and

- Theft (NRS 205.0832), which covers a broad range of actions that includes passing a check while knowing that funds are not sufficient to cover it.

All five offenses carry varying degrees of possible penalties upon conviction, including time in jail or state prison, fines and restitution.

"The D.A. is basically the casino's debt collector," stated Michael Becker, a Nevada criminal defense attorney. "Instead of hiring their own lawyers, casinos exploit public resources to recover private funds."

"In our opinion, there's an inherent conflict of interest in the whole system because the state has an added incentive to prosecute. The more you allegedly owe to a casino, the more the D.A. makes in collection fees," he added.

"The bad check unit of Las Vegas' Clark County District Attorney's Office functions as a collection agency for the casinos," agreed Adam Resnik, a former felon with a pathological gambling addiction and an expert on the subject.

Another issue is the "presumption of guilt" which critics say is built into state law. In order to secure a conviction, prosecutors need only prove that a gambler willfully took out a casino marker while having insufficient funds in his or her bank account to pay it. The law automatically presumes intent to defraud if there were insufficient funds in the bank when the casinos try to

redeem the markers.

"Nevada casino marker law is very biased towards the casinos," said Henderson, Nevada criminal defense attorney Neil Shouse. "If your bank account overdrafts, the law basically says you're guilty until proven innocent."

"We don't put people in jail for failing to pay debts," countered Chief D.A. Zadrowski. "We put people in jail for committing crimes, and that's what this case [against Zahavi] was all about."

Of course, those crimes are for failing to pay debts to casinos, making the D.A.'s

counter-argument somewhat counter-intuitive. ■

Sources: [www.ibtime.com](http://www.ibtime.com), <http://profootballtalk.nbcsports.com>, [www.shouselaw.com](http://www.shouselaw.com), [www.reviewjournal.com](http://www.reviewjournal.com), [www.cardplayer.com](http://www.cardplayer.com), [www.gamingzion.com](http://www.gamingzion.com)

## Ninth Circuit Affirms Preliminary Injunction in Challenge to California's CASE Act

ON NOVEMBER 7, 2012, A FEDERAL judge granted a temporary restraining order (TRO) enjoining the implementation of parts of the Californians Against Sexual Exploitation Act ("CASE Act"), passed by voters as Proposition 35, which requires registered sex offenders (RSOs) to provide identifying information about their online accounts to the government.

In seeking the TRO on behalf of all RSOs, the ACLU of Northern California and Electronic Frontier Foundation argued that the CASE Act's provisions requiring RSOs to provide the police with a list of their Internet providers and screen names violated their rights to free speech and association under the First Amendment, as well as their due process and equal protection rights.

U.S. District Court Judge Thelton Henderson concluded there were "serious questions" about whether the challenged sections of the CASE Act violated RSOs' First Amendment and other constitutional rights. He also found that, insofar as the state indicated it would be unable to enforce the new law until March 2013, there would be minimal harm in issuing a TRO.

Noting that RSOs would suffer the

potential loss of their ability to speak anonymously on the Internet, that such a loss of First Amendment freedoms "unquestionably constitutes irreparable injury" and that there is a significant public interest in upholding free speech principles, as well as in preventing violation of a party's constitutional rights, Henderson held the standards for issuing a TRO had been satisfied.

In January 2013, the district court also granted the plaintiffs' motion for a preliminary injunction, enjoining the state's enforcement of the CASE Act. "The Court does not lightly take the step of enjoining a state statute, even on a preliminary basis. However, just as the Court is mindful that a strong majority of California voters approved Proposition 35 and that the government has a legitimate interest in protecting individuals from online sex offenses and human trafficking, it is equally mindful that '[a]nonymity is a shield from the tyranny of the majority,' and that Plaintiffs enjoy no lesser right to anonymous speech simply because they are 'unpopular.'"

The state appealed the preliminary injunction order to the Ninth Circuit on February 11, 2013, and the case was stayed

pending the outcome of the appeal. See: *Doe v. Harris*, U.S.D.C. (N.D. Cal.), Case No. 3:12-cv-05713-TEH.

On November 18, 2014, the Ninth Circuit affirmed the district court's order granting the preliminary injunction, finding it had not abused its discretion. Specifically, the appellate court determined the lower court had properly considered the standards for issuing the injunction and concluded, "as did the district court, that Appellees are likely to succeed on the merits of their First Amendment challenge." See: *Doe v. Harris*, 2014 U.S. App. LEXIS 21808 (9th Cir. Nov. 18, 2014). ■

### \*\*\*\*7 DAY FREE TRIAL\*\*\*\*

INMATE EMAIL NEWS + SERVICES

BOP INMATES - TRULINKS USERS

DAILY EMAILS + UPDATES ON SPORTS

NEWS, MUSIC, ENTERTAINMENT - TV

TONIGHT'S MOVIE AND SPORTS GUIDE

INFO@FORTHESCOOP.COM

P.O. BOX 90594

SAN ANTONIO, TX 78209

## MARILEE MARSHALL & ASSOCIATES, ATTORNEYS AT LAW

California State Bar Board of Specialization  
**Certified Criminal Law and  
Appellate Law Specialist**

*If you have a California case  
you need a California lawyer!*

(626) 564-1136



**State and Federal Appeals and  
Writs, Lifer Parole Hearings  
and Related Writs**

**31 years of success**

595 East Colorado Blvd

Suite 324

Pasadena, CA 91101

[marileemarshallandassociates.com](http://marileemarshallandassociates.com)

# Education is Better than Punishment: Something We Can All Support!

by Vivian D. Nixon

**L**EARNED IN THE HARSHTEST WAY POSSIBLE that in the United States of America, every felony conviction, no matter what the judge officially assigns in months or years, quite literally results in a life sentence. As a strong proponent of decarceration, I am encouraged by efforts toward sentencing reform which will get some people out of prison sooner. But I am painfully aware that release from prison will present new challenges for those individuals whose futures have been made permanently fragile by their status as convicted criminals.

The lifetime consequences of a criminal conviction are evident in the diminished social status and in the devastation of poor communities and communities of color that have been hyper-policed, hyper-prosecuted and hyper-punished for decades. Individuals from these communities are punished not only by virtue of the time they actually spend in prison, on probation or in an alternative program, but because of the additional punishments that are inflicted for a lifetime. The consequences of a felony conviction include periods of voter disenfranchisement that vary state by state, travel restrictions, restricted access to public housing, restrictions on federal educational benefits, barriers to certifications and licensure for certain professions, and an irreversible stigma that permeates every aspect of life.

For those who spend time in prison, release is stressful under the best of circumstances. People are released with a small stipend that barely covers the cost of living for a day or two. Without adequate assistance, many understandably fail to find meaningful employment, build relationships and integrate successfully into a community. Having been released to a militaristic system of supervision that provides few services, imposes conditions that almost guarantee failure and often expects failure, many parolees return to prison. Those who manage to successfully stay out

remain stigmatized by the requirement that they continue to identify themselves on legal documents, job applications, school applications and in numerous other places as a person who has a criminal conviction, no matter how long ago the original crime occurred. These types of punitive responses to people who have made serious mistakes but have already repaid their debts to society do nothing to solve the problems, like unemployment, that lead to crime, and hinder rather than promote rehabilitation and successful integration into the community.

It is difficult to understand why there would be any policy in place that would make it more difficult for people to come home from prison and do the right thing. I'm assuming the perspective of the mainstream in that doing the right thing means, at the very least, becoming self-supporting and living within the boundaries of the law. It has been argued that many of the barriers that are in place to restrict convicted people from certain jobs, from public housing, etc., are there to protect the public. However, the stronger arguments demonstrate that such barriers are purely punitive. Furthermore, in being punitive to individuals, we are actually causing further damage to our larger society. Unsurprisingly, there is now strong evidence to show that by failing to provide convicted individuals with the tools needed to succeed once they leave the criminal justice system, growing incarceration has significantly increased poverty in our nation.

Among the most absurd punitive policies making it difficult to succeed after conviction are policies that restrict access to higher education. I say absurd because, at this point, even those on the most conservative side of the public dialogue about prison reform agree that "Prisoners should be provided free education in order to reduce crime and recidivism." This is a direct quote that former Speaker of the House Newt Gingrich made during a meeting of Right on Crime in Washington, D.C. last spring.

At the same time that living-wage employment has required higher skill levels, education – particularly higher education – has increasingly become the

most under-appreciated, underused and under-supported tool offered inside correctional facilities. This has happened despite the numerous studies proving that education is the most reliable predictor of reduced criminal recidivism. Educational attainment, besides being a worthy goal in itself, also increases one's prospects for securing meaningful employment, enabling individuals to support themselves and their families. While nationwide 43.3% of formerly incarcerated individuals are likely to return to prison within three years of release, the likelihood drops to 5.6% for Bachelor's degree recipients and less than 1% for Master's degree recipients.

Despite this data the growing trend is to create post-conviction barriers for individuals who are attempting to apply to college. The Center for Community Alternatives found that nearly sixty percent of colleges and universities nationwide screen students for criminal records during the application process. In some cases, applicants are asked whether they've ever been arrested – even if the arrest did not lead to a conviction. Institutions that request this information often do so without appreciation for the complexities of criminal records and with no thoughtful process for evaluating the impact a criminal record may or may not have on a particular student's ability to successfully engage in the educational process.

For incarcerated individuals who desire to access higher learning opportunities, yet another barrier exists: they are ineligible for federal Pell Grants. Established by the late Senator Claiborne Pell, the grants allowed people – including those inside correctional facilities – who could not afford college to access postsecondary education. Incarcerated students were made ineligible for Pell Grants in 1994 under the Violent Crime Control and Law Enforcement Act, a contradiction of Senator Pell's legacy of helping ensure that everyone could attend college. After eligibility was removed, the number of higher education programs in prisons dropped from 350 to 8, nationwide.

For more than 40 years, the goal of the Pell Grant program has been to provide

## Dictionary of the Law

Thousands of clear, concise definitions.  
See page 61 for ordering information.



need-based assistance to students to promote access to higher education. Funding flows directly to the educational institution, and eligibility for aid is based on student need and expected family contributions. Pell Grants are available to anyone who qualifies; thus, removing the barrier to eligibility for incarcerated persons does not diminish the opportunity of any other eligible student to receive financial aid. It simply ensures that all qualified low-income students who are motivated to pursue higher education have equal access to aid.

As a formerly incarcerated woman of color, my incarceration does not define me but it did provide an opportunity for me to live a life that matters. I always knew that prison had changed me forever, but I wasn't sure exactly how it had changed me until I returned to the Albion Correctional Facility as an invited guest to speak to the women about education. Returning reminded me that I had found meaning as a tutor in the Adult Basic Education class there, and that's where I realized that once caught up in the cycle without education it is almost impossible to get out. I vowed then to complete college when I got out and I've

been working to make sure others have the opportunity to do the same.

When my visit was over it was count time. I noticed the deadly silence that descends when there is no movement in the prison; I felt out of place. Then I remembered that "out of place" is indeed a punishable charge for "inmates." The fear that had been eternally etched into my spirit was re-ignited. The sense of foreboding traveled with me as I cleared the gate and returned to a society in which I am forever "out of place."

People with criminal convictions live among us daily. It is up to us to decide how best to create systems and policies that promote public safety. Making it difficult for people to access opportunity and contribute to society is contrary to that goal, and contrary to the economic health of our country.

The Education from the Inside Out Coalition supports policy change to eliminate the 1994 ban on Pell Grant eligibility for incarcerated persons and re-establish the opportunity for otherwise eligible people in prison to obtain college financial aid through Pell Grants for postsecondary

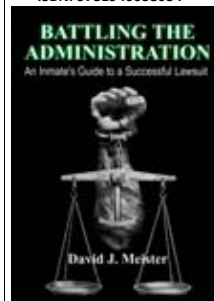
education programs. We also work to eliminate discriminatory practices for people with convictions who are applying to colleges on the outside. For more information please write to us at the Education from the Inside Out Coalition, 475 Riverside Drive, Suite 1626, New York, NY 10115; [www.eiocoalition.org](http://www.eiocoalition.org).

*Vivian D. Nixon is the executive director of College and Community Fellowship in New York; she provided this article exclusively for PLN.*

## BATTLING THE ADMINISTRATION

An Inmate's Guide to a Successful Lawsuit

by David J. Meister  
ISBN: 9781940638034



1<sup>st</sup> Edition 2013-2014  
**\$34.95** includes shipping

Send Check or money order to: **Wynword Press**  
P.O. Box 557  
Bonners Ferry, ID 83805

\*Guidance on how to get organized \*Sample complaint & other forms  
\*Covers court rules, evidence and exhibits  
\*Citations to controlling case law \*Summary of prisoner's rights \*Details on hearing and trial practice, ...and more!

Tele: 208-267-0817

Order online at: [www.wynwordpress.com](http://www.wynwordpress.com)



## Save on Prescription Eyeglasses & Shades

Send for a **FREE** Catalog  
Money Back Guarantee

**Prism Optical, Inc.**  
10954 NW 7th Ave  
Dept: LN1214  
Miami, FL 33168

Inquiries from Friends  
and Family Welcome  
1-800-637-4104  
[www.prismoptical.com](http://www.prismoptical.com)  
[contact@prismoptical.com](mailto:contact@prismoptical.com)



# BRANLETTES BEAUTIES

## OUR SIMPLE POLICIES:

SPECIAL REQUESTS ARE NOT PERMITTED AND ALL MODELS ARE OF LEGAL AGE (BOP-FRIENDLY). DUE TO TREMENDOUS TIME AND COST ANSWERING LETTERS, UNLESS YOU ARE PLACING AN ORDER OR A QUESTION REGARDING YOUR ORDER, WE WILL NOT REPLY TO ANY OTHER QUESTIONS.

SASE ARE REQUIRED FOR ANY INQUIRIES OR CONCERNS!

**YOU AND YOU ALONE ARE RESPONSIBLE FOR YOUR SELECTIONS BEING ALLOWED INTO YOUR FACILITY:**

KNOW YOUR INSTITUTIONS POLICIES AS TO WHAT IMAGE CONTENT IS ALLOWED. RETURNED ORDERS ARE NON-REFUNDABLE. THEY WILL BE HELD FOR 14 CALENDAR DAYS IN ORDER FOR YOU TO SEND SELF-ADDRESSED STAMPED: 3 FIRST CLASS STAMPS PER ENVELOPE, WITH A STREET ADDRESS FOR EVERY 20 PICTURES. ALL RETURNED IMAGES HELD AFTER TWO WEEKS WILL BE RE-SOLD AND WE WILL RETURN TO OUR STOCK.

**ALL PAYMENTS ARE BY INSTITUTIONAL CHECKS OR U.S. POSTAL SERVICE OR WESTERN UNION MONEY ORDERS.**

THESE PAYMENTS ARE PROCESSED IMMEDIATELY AND SHIPPED IN LESS THAN 3-4 WEEKS. ANY OTHER COMPANY MONEY ORDERS DELAY SHIPMENT 8-10 WEEKS OR UNTIL THAT MONEY CLEARS OUR BANK. YES, WE DEAL WITH PEOPLE THAT ARE, WHILE IN PRISON, STILL TRYING NICKEL AND DIME SCAMS...

**ALL SALES ARE FINAL! EACH CATALOG HAS 84 GORGEOUS LADIES TO CHOOSE FROM HIGH QUALITY PRINTS ON 4X6 GLOSSY PHOTO PAPER**

OUR PRICES ARE SIMPLE:

1-4999 PHOTOS = 0.45 CENTS EACH  
5000+ PHOTOS = 20% DISCOUNT  
1-9 CATALOGS: \$3.00 EACH (+SASE)  
10 CATALOGS: \$25.00+SASE (4 STAMPS)

SHIPPING & HANDLING:

DUE TO VARIOUS PRISON POLICIES REGARDING HOW MANY PICTURES CAN BE SENT IN ONE ENVELOPE, OUR POLICY IS AS FOLLOWS:  
01 - 5 PHOTOS---\$1.00 PER ENVELOPE  
06 - 15 PHOTOS---\$1.50 PER ENVELOPE  
16 -25 PHOTOS---\$2.00 PER ENVELOPE

## BRANLETTES BEAUTIES

SELECT YOUR FAVORITE:

WHITE CATALOGS (60 VOLUMES)  
BLACK CATALOGS (60 VOLUMES)  
ASIAN&LATINO CATALOGS (60 VOLUMES)  
PLEASE STATE WHAT STYLE PHOTOS:  
PROVOCATIVE POSES OR NUDE

## FREE CATALOG???

YOU READ IT RIGHT!  
JUST SEND US TWO U.S. FOREVER STAMPS AND A SELF ADDRESSED SELF ENVELOPE AND WE WILL SEND TO YOU ONE NUDE OR BOP-FRIENDLY SAMPLE CATALOG (1 PER CUSTOMER) WITH 84 GORGEOUS GIRLS IN FULL COLOR. ACT NOW AS THIS OFFER WILL NOT BE AROUND LONG!!

BRANLETTES BEAUTIES BAC A RANDOM SELECTION OF 50 OF THE RARE AND EXOTIC \*\*\*YES, FIFTY BEAUTIES ALL POSING JUST FOR YOU!\*\*\* PLUS TWO OF OUR FINEST COLOUR CATALOGS ONLY \$19.95 DID YOU READ THAT RIGHT??? \*\*\*\$19.95\*\*\* YES, ONLY \$19.95 FOR 50 OF BRANLETTES BEAUTIES BEAUTIES (PLEASE SPECIFY NUDE OR BOP-FRIENDLY) \*\*\*PLUS\*\*\* TWO OF OUR FINEST COLOUR CATALOGS FREE (YOU PICK A VOLUMES) OUR REGULAR SHIPPING AND HANDLING POLICIES APPLY.

**BRANLETTES**  
P.O. BOX 5765  
BALTIMORE, MD  
21282

# Reenergized D.C. Corrections Information Council Targets Jail and Prison Conditions

by Derek Gilna

**T**HE NUMBER OF SUICIDES AT THE District of Columbia Jail was cited as the top concern of an independent agency whose mission is to monitor conditions for thousands of incarcerated D.C. offenders housed in the District's jail system and in federal Bureau of Prisons (BOP) facilities across the nation.

While the District of Columbia operates its own jails, including the Central Detention Facility and Correctional Treatment Facility, the latter managed by Corrections Corporation of America, D.C. offenders sentenced to prison terms are transferred to BOP facilities.

To address its primary concern, the annual report of the D.C. Corrections Information Council (CIC) for fiscal year 2013 recommended that the District's Department of Corrections (DOC) develop "new training and protocol" to deal with jail suicides.

The report noted "there have been four suicides at the D.C. Jail since November 2012 and 165 suicide attempts in the past two years," prompting a "study by a nationally-recognized expert in the subject" and the formation of a special task force to investigate the issue. Task force members testified as to their findings at a City Council hearing.

The annual report stated that "correctional mental health experts and community members familiar with the issue testified at this hearing before the City Council. The CIC recommends the D.C. DOC take their testimony into account when developing new training and protocol in this area."

The CIC also reported receiving "numerous and ongoing reports of poor conditions of confinement" at the high-security United States Penitentiary McCreary in Pine Knot, Kentucky. The agency said prisoners had cited "slow or non-existent medical care; racist and abusive staff; retaliatory practices by staff including pepper spray, paper sheets, and other punitive measures," as well as problems computing the proper length of prisoners' sentences.

The CIC expressed optimism that the new warden assigned to USP McCreary, J.C. Holland, would take steps to correct the problems.

The report further stated that "the CIC met or exceeded" the four primary goals it had established for itself in 2013, including

inspecting prison facilities, meeting with more than one-fourth of all D.C. prisoners in BOP custody, holding or attending at least a dozen community outreach meetings and conducting three expert training sessions.

Following a seven-year hiatus, the CIC re-emerged in mid-2012 after D.C. Mayor Vincent C. Gray and the City Council responded to requests from prisoners' rights advocates to appoint new board members to the agency.

The CIC's mission is "to inspect the prisons, jails, and residential reentry centers where D.C. residents are incarcerated in order to ensure compliance with constitutional, human rights, statutory, and institutional standards that govern the operation of these facilities."

In its public mission statement, the agency notes that "independent prison monitoring, as opposed to government or industry oversight, ensures accurate, unbiased information about the status of specific prisons, jails and halfway houses as well as the system as a whole. This type of oversight provides staff and inmates with the knowledge that an independent body is observing and reporting on the conditions" of their confinement.

The task is not always an easy one. The CIC's annual report noted that "during fiscal year 2013, there were 5,697 District of Columbia residents in 113 BOP facilities in 34 states," many incarcerated "far from their government, homes, and families."

These offenders, some of whom are housed as far away as California, "face unique obstacles in maintaining community connections and in reentering the community upon completion of their sentences," the report stated. "The CIC's oversight role also includes reporting on these unique obstacles and making recommendations to remove barriers to reentry." Additionally, the agency monitors conditions for around 2,270 prisoners in the D.C. jail system.

The CIC was largely inactive following its creation as part of the National Capital Revitalization and Self-Government Improvement Act of 1997. Since 2012, board members and staff have been on a steep learning curve, meeting with corrections officials, prisoner advocates and BOP officials to not only establish better communication but also

to review policies and procedures. Towards that end the agency has engaged in extensive outreach to learn the community's concerns about the welfare of D.C. prisoners, among other administrative goals.

During fiscal year 2013, the CIC reported that it "conducted eight facility inspections and inspected video visitation at the D.C. Jail," in addition to a tour of the high-security United States Penitentiary Beaumont in Texas. "These inspections and tours reached all D.C. DOC inmates, and 1,443 residents in [BOP] custody – more than a quarter of all residents incarcerated outside the District."

The 2013 inspections came on the heels of the panel's efforts during the previous year, when the CIC and its staff toured the District of Columbia jails, the United States Penitentiary Hazelton and Secure Female Facility in West Virginia, and the Federal Correctional Institution in Cumberland, Maryland.

While visiting the facilities, they listened to the first-hand comments of D.C. men and women confined in those institutions, who voiced concerns about treatment by staff, inadequate or indifferent medical care, little or no contact with loved ones, limited visitation, the high cost of making phone calls home and a lack of nutritious food.

The CIC's three board members include Rev. Samuel Whittaker, a pastor and member of Mayor Gray's 2011 Faith Based Transition team, who has experience counseling former offenders; Katherine A. Huffman, who began her legal career as a civil rights litigator in Atlanta, focusing on prison and jail conditions in the Southeast; and Cara M. Compani, an attorney whose "interest in conditions of confinement and reentry began while working with juveniles" in upstate New York.

D.C. prisoners can contact the CIC at this address: D.C. Corrections Information Council, Wilson Building, 1350 Pennsylvania Avenue, NW #533, Washington, DC 20004; (202) 478-9211. ■

Sources: *Washington Post*; "District of Columbia, Corrections Information Council Annual Report, Fiscal Year 2012" (November 2012); "District of Columbia, Corrections Information Council 2013 Annual Report" (February 28, 2014); <http://washington.cbslocal.com>; <http://cic.dc.gov>

## CHEAP LOCAL FEDERAL CALLS

*Get a local Number & Save up to 85% on Prison Calls with Sentel.  
Save on International Calls with Sentel.*

**For Packages USA, Canada and Puerto Rico only:**

<b><u>ECONOMY PLAN (USA)</u></b>	<b><u>3-MONTH PLAN (USA)</u></b>	<b><u>6-MONTH PLAN (USA)</u></b>	<b><u>12-MONTH PLAN (USA)</u></b>
<b>Price: \$14.99</b> For the first line	<b>Price: \$41.99</b> For the first line	<b>Price: \$71.99</b> For the first line	<b>Price: \$119.99</b> For the first line
<b>400 Minutes per Month</b> Duration: 1 Month	<b>400Mns per Month</b> Duration: 3 Months	<b>400Mns per Month</b> Duration: 6 Months	<b>400 Mns per Month</b> Duration: 12 Months
Additional lines @ \$2 each Best up to 4lines Monthly	Additional lines@ \$4.5 each Best up to 4lines	Additional lines @ \$6 each Best up to 4lines	Additional lines @ \$12ea Best up to 4 lines

### **For USA & INTERNATIONAL PLANS PER MINUTE RATE**

<b><u>USA &amp; INTERNATIONAL</u></b>		
<b>Price for 1st line: \$1</b> <b>Activation Fee: \$1</b>  Add a line: 50 cents Rates Based Upon Destination Guaranteed lowest rates Rollover Minutes Great for Multiple Lines	USA: 6 cents for All Mexico landline: 10 cents Mexico Cellphone: 15cents Colombia: 15 cents Nigeria: 22cents Most of Europe: 22 cents Honduras: 22 to 29 cents Guatemala: 22 to 29 cents Jamaica: 29 cents	Dominican Rep: 15 cents Haiti: 35 cents India: 10 cents China: 10 cents Ecuador: 29 to 35 cents Most of our International rates : 22cents For Areas not Cited Please contact us

**We accept debit and credit card payments, institutional checks, bank deposits and paypal**

**Sentel, Sentel**

**9550 S. Eastern Ave Ste 253**

**Las Vegas, NV 89123**

**Ph: 702-430-9445**

**Email: [sentel.nv@gmail.com](mailto:sentel.nv@gmail.com)**

**Website: [www.sentelinmatecall.com](http://www.sentelinmatecall.com)**

**Note : Please do not send any inquiries by mail. Mail is only for orders and payments.**

**Note: We do not provide service to County Jails and States Prisons**

# Agreement to Limit Solitary Confinement in New York State Prisons Applauded

CIVIL RIGHTS GROUPS AND NEW YORK State officials are hailing as “historic” an agreement to enact sweeping reforms in the way the state’s prison system uses solitary confinement as a means of punishing prisoners.

Under the unprecedented February 2014 agreement between the New York Civil Liberties Union (NYCLU) and New York State Department of Corrections and Community Supervision (DOCCS), the state agreed to immediately begin to remove pregnant and mentally disabled prisoners from segregation.

The agreement, which suspends a class-action lawsuit, also makes New York’s prison system the largest in the nation to ban the use of solitary confinement to punish offenders under the age of 18.

“These changes, while just a first step, are significant,” noted NYCLU executive director Donna Lieberman. “They’re historic. We’re the largest system in the country to preclude solitary confinement for juvenile prisoners. That’s huge.”

Echoing Lieberman’s remarks, DOCCS Acting Commissioner Anthony J. Annucci said the changes would “make the disciplinary practices in New York’s prisons more humane.”

“New York State has done the right thing by committing to comprehensive reform of the way it uses extreme isolation, a harmful and inhumane practice that has for years been used as a punishment of first resort in New York’s prisons,” Lieberman observed. “By entering into this agreement, [Governor Andrew Cuomo’s] administration has shown that it has the vision to transform New York into a national leader in the movement toward alternatives to solitary confinement, and has prioritized the safety of prisoners, prison staff and New York’s communities.”

Under the agreement the state will adopt disciplinary sentencing guidelines, and will set first-ever maximum limits on the length of time served in solitary confinement. In return, the NYCLU agreed to suspend its class-action suit against the state for two years. If reforms do not move forward by then, the suit will resume.

“We agreed to suspend our lawsuit because the State demonstrated in the course

of these negotiations a real commitment to reform,” said NYCLU senior staff attorney Taylor Pendergrass, lead counsel in the case. “This will not only be a tremendous accomplishment for the State of New York and DOCCS, but will also signal a critical reorientation of the system toward practices that emphasize treatment and rehabilitation over punishment and isolation.”

As part of the agreement, DOCCS will also increase the number of hours of recreation and expand access to radios and educational materials for prisoners in segregation. Previously, prisoners held in solitary confinement were allowed only one hour of recreation per day and denied access to educational materials.

“This agreement is an important step toward dignity and decency,” said lead plaintiff Leroy Peoples, who served 780 consecutive days in solitary for nonviolent behavior. “I thank the governor for taking this seriously and hearing us out.”

“Hopefully, this agreement can stop the prison system from failing our communities,” added plaintiff Dwayne Richardson, who was sentenced to 1,095 days in segregation, also for nonviolent behavior. “This agreement has the potential to change DOCCS’s focus to treatment, not just punishment, so some good will come of our time in prison.”

The agreement resulted from the NYCLU’s class-action lawsuit, *Peoples v. Fischer*, U.S.D.C. (S.D.N.Y.), Case No. 1:11-cv-02694-SAS, which challenged New York’s use of solitary confinement. An October 2012 NYCLU report, “*Boxed In: The True Cost of Extreme Isolation in New York’s Prisons*,” revealed that DOCCS routinely sentenced prisoners to weeks and even years of solitary for the most minor of infractions.

“New York is taking a substantial step in the right direction, and we hope that it will ultimately join the many other states who have recognized that lengthy isolation sentences cause serious harm while accomplishing little if any of the goals of a rational corrections system,” said Professor Alexander Reinert, with the Benjamin N. Cardozo School of Law.

“With so little to do, your mind rots with thoughts that are uncommon or unnatural,” wrote Daniel, a 52-year-old

DOCCS prisoner at the Upstate Correctional Facility, in a letter to the NYCLU about his experiences in SHUs (“Special Housing Units,” the term DOCCS uses for solitary confinement).

Daniel, who has a history of self-mutilation, wrote that his time in “the Box,” as prisoners refer to the SHU, made him “become numb” and “lose the sense of reality to the degree that any commotion at all is better than vegetating by letting hours pass [with] nothing on your mind or [the] will to do anything.”

Letters like Daniel’s were the centerpiece of the NYCLU report, which was the culmination of a year-long investigation that included interviews with prison guards, mental health professionals, and SHU prisoners and their families and attorneys. The NYCLU also reviewed thousands of pages of DOCCS regulations and disciplinary records, statistical information regarding the prison system’s use of isolation, and prisoners’ disciplinary and mental health histories, as well as more than 100 letters from SHU prisoners.

The investigation found almost 4,500 prisoners were held in “the Box” throughout the prison system every day, including nearly 2,000 at two facilities where the NYCLU concentrated its investigation: Upstate, near the Canadian border, and the Southport Correctional Facility in Pine City, New York.

Prisoners in segregation are kept inside a cell about the size of a bathroom for 23 hours each day, with the remaining hour for outside exercise in a segregated cage known as a “kennel.” Meals are delivered through a slot in the door. And every year, according to the NYCLU, about 2,000 prisoners “are released directly from the SHU back to the community.”

What the NYCLU found especially egregious about “the Box” was how so many DOCCS prisoners were placed there for such long periods of time. According to the report, between 2007 and 2011, prisoners were put in solitary confinement more than 75,000 times for an average of 150 days – what experts said was five to 10 times longer than the maximum tolerable length – with some prisoners serving SHU terms of years or even decades.



The report found that roughly 90% of those placements served as punishment for alleged disciplinary violations of more than 100 institutional rules – everything from personal grooming and personal property to fighting.

According to DOCCS regulations, guards are discouraged from submitting misbehavior reports for “minor infractions” or other violations that “do not involve danger to life, health, security or property.” But once a guard submits a disciplinary charge, prison officials have far too much discretion, the NYCLU argued, in determining whether the violation merits solitary.

In addition, once a misbehavior report reaches a disciplinary hearing, hearing officers – who are DOCCS employees – usually favor a guard’s testimony over a prisoner’s.

“My story was credible. I appealed [to DOCCS headquarters in] Albany,” wrote Donell, an Upstate prisoner who, like Daniel and others, was given a pseudonym by the NYCLU to avoid retaliation by prison officials. “You can never beat a ticket. The disciplinary hearings are unfair... [T]he hearing officers are friends with the [guards].”

The NYCLU’s research corroborated Donell’s claim. From 2007 to 2011, approximately 95% of the more than 105,000 disciplinary hearings held by DOCCS for Tier III violations – those reserved “for the most serious offenses, such as assaults on staff or other inmates” – resulted in a conviction and time in “the Box.” Moreover, the NYCLU learned, prisoners were often found guilty “based solely on the misbehavior report and the [guard’s] testi-

mony while dismissing conflicting prisoner testimony.”

“We are incarcerated for a crime. We are in here repaying that [debt],” wrote Adrian, a Southport SHU prisoner. “We shouldn’t be punished in here with unfairness.”

Donn Rowe, who until recently headed the union representing New York’s state prison guards, would not comment on the agreement between NYCLU and DOCCS, but when the civil rights suit was filed in 2012, Rowe submitted an editorial to the *New York Post* in which he described solitary confinement as being critical for ensuring “stability and safety” in state prisons.

The former commissioner of New York City’s corrections system, Martin Horn, agreed that reforms are needed to curtail the use of solitary, but said he worried the agreement will strip guards of an important tool used to maintain order.

“Some segregation will always be necessary in a prison system like New York’s, for safety reasons,” stated Horn, currently a professor at the John Jay College of Criminal Justice. “As programs and activities have

been stripped as a result of budget cuts, all that is left is idle inmates,” he added. “And idle inmates make problems.”

Horn said he hoped that New York State will continue to develop and fund reform programs such as those championed by Governor Cuomo, including new education and training programs that can provide incentives in lieu of punishments like solitary confinement. ■

Sources: “*Boxed In: The True Cost of Extreme Isolation in New York’s Prisons*,” *New York Civil Liberties Union* (October 2012); [www.nyclu.org](http://www.nyclu.org); *The New York Times*; <http://prisondivestment.wordpress.com>; [www.huffingtonpost.com](http://www.huffingtonpost.com); *Associated Press*; *Wall Street Journal*

### Roget’s Thesaurus

Can’t think of the right word?  
Let Roget’s help you! Over 11,000 words listed alphabetically.  
See page 61 for more information.

**inmateMAGS**.com  
formerly MyMagstore.com

Buy 1200 **SINGLE** Copies of Magazines • 1200 **Subscriptions** • **VIP Service**  
1800 **Newspapers** • Payment with **Stamps** • **Prepaid Accounts**  
Send \$3 or 10 Stamps for **\$50+ Page Full Catalog** (\$3 Discount Coupon Included)

InmateMAGS.com  
4208 University Way NE  
Seattle, WA 98105

[www.inmateMAGS.com](http://www.inmateMAGS.com)  
[info@inmateMAGS.com](mailto:info@inmateMAGS.com)  
206-322-6397

**FreedomLine**®

*We make it simple.*

**You reach your loved ones by calling a local number.**  
**That’s a lot cheaper than calling long distance. It’s that simple!**

- We charge \$2.50 per month for the number.
- For Calls to anywhere in the U.S., we charge you 5¢ per minute
- To Mexico - 15¢; to Canada - 11¢, to just about anywhere else in the world - 31¢
- No Contract, No Credit Check, No Setup Fee, No Cancellation Fee, No Early Termination Fee
- Cancel anytime; any money left on the account is refunded

Tell Your Folks to Sign Up at [www.freedomline.net](http://www.freedomline.net)

Or Mail: FreedomLine  
PO Box 7 - SCA  
Connersville, IN 47331

Also see our long-running  
Classified Ad in this and every issue

FCC Reg. No. 0021217047

*Any time you refer  
a new customer  
and they sign up, you  
both get 300 free minutes!*  
Some restrictions apply.  
Details upon request.



# When Attorneys Fumble, Defendants Face Consequences

by David M. Reutter

**T**HE RIGHT OF DEFENDANTS FACING criminal charges to be represented by counsel is the bedrock of our criminal justice system, expressly enshrined in the Sixth Amendment.

An underlying doctrine to that right holds that counsel becomes an agent of the client, binding the client to the actions and inactions of their attorney. In cases where counsel acts negligently, the client is often unable to pursue or is denied relief—though one federal circuit court judge has stated that such an outcome in capital cases is “unjust and inequitable.”

After the U.S. Supreme Court held in 1963 in *Gideon v. Wainwright* that every criminal defendant has the right to representation by counsel, states created public defender offices or other means of indigent defense. The right to counsel has extended, thus far, to representation at trial and on direct appeal. Recently, the Supreme Court held that cause to overcome the Antiterrorism and Effective Death Penalty Act (AEDPA) may be established when a claim of ineffective assistance of trial counsel must be raised on collateral review and counsel was not provided for that purpose. See: *Martinez v. Ryan*, 132 S.Ct. 1309 (2012) [*PLN*, Nov. 2013, p.12].

Currently, most criminal defendants are left on their own to navigate and litigate in the difficult post-conviction arena, which typically encompasses habeas corpus petitions. Death row prisoners, however, often receive appointed counsel or are approached by groups willing to assist them due to the fact of their death sentences.

Unlike in most states, prisoners on death row in Alabama are not guaranteed appointment of counsel in post-conviction proceedings. As a result, as noted by Su-

preme Court Justice Ruth Bader Ginsburg, “On occasion, some prisoners sentenced to death receive no post-conviction representation at all.”

After Alabama death row prisoner Ronald B. Smith, Jr.’s direct appeal was affirmed by the Alabama Court of Criminal Appeals and Alabama Supreme Court, he was contacted by the Equal Justice Initiative (EJI), a Montgomery-based nonprofit law firm that represents poor people and prisoners. The March 8, 2001 letter from EJI informed Smith that volunteer attorneys and law students were preparing a state post-conviction petition on his behalf. EJI’s caseload was too heavy to represent him, but the organization was seeking counsel and would send him the petition to file *pro se* if that effort failed.

EJI was able to convince Tennessee attorney William Massey to represent Smith in July 2001. Because Massey was not admitted to practice in Alabama, he recruited Alabama attorney C. Wade Johnson to act as local counsel. With Smith’s time limit under the AEDPA set to expire on October 2, 2001, his petition was filed on September 27.

Although it was unclear which attorney filed the petition, it was clear the petition was filed without the required \$154 fee or a motion to proceed *in forma pauperis*. The clerk returned the petition on October 15, and it was not refiled until February 6, 2002. That filing occurred only after a state attorney called Johnson’s office to advise that Smith’s state limitations period was about to expire.

The petition was denied and eventually became final on July 15, 2005. Four days later, Smith filed a federal habeas petition. The Alabama federal district court dis-

missed the petition because it was not filed within the one-year statute of limitations required by AEDPA. The Eleventh Circuit Court of Appeals affirmed on December 28, 2012, holding that neither statutory nor equitable tolling applied.

The appellate court’s majority opinion and Judge Rosemary Barkett’s dissent reveal the problem with the doctrine that makes a client accountable for the actions and inactions of their attorney: In most cases, prisoners have no control or supervision over the work or conduct of their lawyer. Rather, they must trust the attorney is protecting their rights and acting in their best interests. Also, prisoners represented by counsel generally cannot file *pro se* pleadings in court in an effort to protect their own rights.

In some cases, the trust that prisoners must put in their attorneys is sadly misplaced. For example, Corey Maples, another Alabama death row prisoner, received legal assistance from the New York firm of Sullivan & Cromwell, one of the most prestigious law firms in the country.

“I have little doubt that the vast majority of criminal defendants would think that they had won the lottery if they were given the opportunity to be represented by attorneys from such a firm,” Supreme Court Justice Samuel A. Alito, Jr. wrote of Sullivan & Cromwell in a concurrence in Maples’ appeal.

Maples’ attorneys completely missed the court filing deadline in his case after leaving the firm and effectively abandoning him. On appeal, the Supreme Court found cause to excuse the missed deadline and remanded the case for further proceedings. See: *Maples v. Thomas*, 132 S.Ct. 912 (2012).

But the conduct of Ronald Smith’s attorney, C. Wade Johnson, was far more egregious.

“From the beginning of his so-called representation of Smith, Johnson was on probation for a public intoxication conviction and was actively abusing prescription drugs and crystal methamphetamine,” wrote Eleventh Circuit Judge Barkett. A sworn affidavit from Johnson’s legal assistant said he would often arrive at the office intoxicated and sometimes had to

## WHEN IT IS YOUR FAMILY’S FUTURE, EXPERIENCE MATTERS STATE AND FEDERAL POST-CONVICTION AND APPEALS

Licensed since 1995, hundreds of appellate briefs and habeas petitions,  
capital qualified for habeas and appeals in Texas and U.S. Southern District of Texas,  
Motions for New Trial, Rule 35 and 60b motions, re-sentencing and arrest of judgment.

Call or write the Law Offices of Patrick F. McCann, 713-223-3805.  
909 Texas Ave, Ste 205, Houston, Texas 77002 • writlawyer@justice.com  
**Serious financial inquiries only.**

be retrieved from his home to attend court hearings.

Within months of taking Smith's case, Johnson was charged with nine counts of possession of a controlled substance. The Alabama State Bar placed him on disability inactive status and appointed a trustee to take over his cases. Johnson subsequently filed for bankruptcy, then committed suicide in August 2002.

Massey, Smith's other attorney, never sought *pro hac vice* status, which made any filings he could have submitted to the court a "nullity" under Alabama law, since he wasn't licensed to practice in that state. Yet the Eleventh Circuit majority held Smith had not been abandoned by counsel and was bound by the actions and inactions of Johnson and Massey.

Judge Barkett noted that "neither Massey nor Johnson ever meaningfully functioned as Smith's attorneys." She questioned the established doctrine of blaming clients for the mistakes of their counsel, and reaffirmed that notion in Smith's case.

"I believe it is unjust and unequitable to require death row inmates to suffer the consequences of their attorneys' negligence

by denying them equitable tolling," she stated. For that matter, it is unjust and unequitable for prisoners not sentenced to death, too.

Cases such as Smith's and Maples' call into question the real meaning of effective representation by counsel. It appears that so long as an attorney has entered a notice of appearance, courts accept that a defendant is receiving adequate representation. In one Texas case, the attorney was physically but not mentally present.

That case involved an attorney who was asleep as testimony and evidence was presented to prove his client's guilt during a capital murder trial. [See: *PLN*, Dec. 1994, p.14]. On appeal, the Fifth Circuit held the defendant could not establish ineffective assistance because it could not be shown that he was prejudiced by his attorney napping during what is presumed to be the most important stage of any criminal case – the trial. The appellate court concluded that defendants do not have an absolute right to an attorney who stays awake. See: *Burdine v. Johnson*, 231 F.3d 950 (5th Cir. 2000).

At least in that case, the ruling was

reversed by the *en banc* Court of Appeals and the defendant's conviction was reversed. Following remand he accepted a plea deal for three life sentences, avoiding the death penalty. See: *Burdine v. Johnson*, 262 F.3d 336, 338 (5th Cir. 2001) (*en banc*), *cert. denied*.

Each of these cases may seem insignificant to those who are not at the blunt end of the criminal justice system, but when the damage as a whole is considered, the erosion of constitutional guarantees such as effective representation by counsel threatens not only basic human rights but shakes the foundation of the democracy upon which our nation is based.

The U.S. Supreme Court denied certiorari review in Smith's case on November 4, 2013, affirming the Eleventh Circuit's finding that his attorneys' failure to timely file his post-conviction petition meant he was simply out of luck. Smith remains on Alabama's death row. See: *Smith v. Commissioner, Alabama Department of Corrections*, 703 F.3d 1266 (11th Cir. 2012), *cert. denied*. ■

Additional source: *The New York Times*

## NEW FRIENDS, HIGHER EDUCATION, AND EMPLOYMENT & HOUSING UPON RELEASE THROUGH WRITEAPRISONER.COM PROFILES

**Contact WriteAPrisoner.com & Start Looking Forward To Mail Call!**

**AS SEEN ON**  
CNN, 20/20, Fox News,  
Dr. Phil, O Magazine,  
E! True Hollywood,  
and hundreds more!

**WriteAPrisoner.com...**

Simply the largest, highest ranked, & most visited website of its kind!\*

- Pen-pal Profiles are affordably priced at \$40 for the first year, \$30 for renewing year
- Features a comprehensive search that allows viewers to find your profile by age, race, location, keywords, & more - 32 search options in all
- Your new friends can email their first message to you along with a photo
- Advertisers non-stop on every major search engine with thousands of websites linking back to us
- Offers free Reintegration Profiles for inmates seeking employment and housing upon release and education during incarceration
- Translated into 51 languages & geared for international search engines
- Viewers can "subscribe" to your profile to be notified when your profile is updated, blog is added, artwork is posted, poetry is added, your release is near & much more
- Pen-pals have the option of helping you with a broad range of topics using WriteAPrisoner.com's free Self-Help Series



**Get Started Today!**

Friends & family can submit your entire 250 word profile, photo, and payment for you online by visiting

**www.writeaprisoner.com/post**

Or for a FREE Brochure, Send a S.A.S.E. to:

WriteAPrisoner.com  
PO Box 10- PLN  
Edgewater, FL 32132 USA

## Learn The Law!

It's a POWERFUL influence in your life.

Choose education to help yourself and others. Blackstone's Independent Study Paralegal Program offers you the opportunity to be productive while serving time.

- Learn Civil & Criminal Law
- Learn Legal Research
- 110 Years of Legal Training Experience
- Study in Your Spare Time
- Affordable Tuition, Easy Payment Plan

**Only \$30.00 Per Month**

☐ **Yes! I'd like to learn more** ☐ **Paralegal Course**  
Please rush me **FREE** course information.

Name \_\_\_\_\_ Doc# \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**Blackstone Career Institute**

Your tuition cost covers your entire program including all textbooks, study guides, exam and homework evaluation services, and your certificate.

P.O. Box 3717 • Allentown, PA 18106



# Audit Finds Significant Increase in Fraudulent Tax Returns Filed by Prisoners

**P**RISONERS ARE FILING PHONY FEDERAL income tax returns in record numbers and the Internal Revenue Service (IRS) continues to pay refunds despite repeated warnings from the Treasury Inspector General for Tax Administration.

Inspector General J. Russell George told a U.S. House oversight subcommittee on February 26, 2014 that according to the IRS, the number of fraudulent tax returns filed with a Social Security Number assigned to a prisoner had skyrocketed from around 18,000 in 2004 to more than 186,000 in 2011.

"The refunds claimed on these tax returns increased from \$68 million to \$3.7 billion," George testified.

"Refund fraud associated with the use of Social Security Numbers of and by prisoners to file false tax returns remains a significant problem for tax administration," he stressed.

The increase in fraudulent tax returns occurred despite repeated warnings to the IRS to be alert to the problem of phony returns filed by prisoners, and despite several changes to federal law to make it easier for authorities to detect them.

The 2011 figures were more than double the previous year, when prisoners filed 91,000 fraudulent income tax returns claiming refunds totaling \$757 million.

Further, in 2010, nearly 1,300 prisoners improperly received more than \$9 million in home-buyer tax credits, according to the Inspector General. [See: *PLN*, Feb. 2011, p.18].

Dwayne Selvey, an Ohio state prisoner

who explained in detail to a Congressional committee in 2005 how he had defrauded the IRS of nearly \$4 million in phony tax refunds, said it was not difficult at all.

"It was about one of the easiest things I've ever done in my life," Selvey told Cleveland's ABC News Channel 5 in an April 2014 news report. "When I first started off, I didn't use a W-2 form, I just used a piece of paper and wrote down like I was the owner of the company."

Selvey said he bought "two Cadillac Escalades, a couple of lake homes and expensive clothes" with the money, which he squirreled away in multiple bank accounts and accessed after he was released. He was later jailed on a parole violation and returned to prison.

"I'm not sure why I got away with it for as long as I did," he stated.

The television station also reported that two other Ohio prisoners serving time for murder, Michael Murdock and Ronald Dean Wells, had claimed more than \$139,000 in fraudulent tax refunds.

"They just made up an amount of purported withholding and said, hey, IRS – give me back that withholding you took out," said Assistant U.S. Attorney John M. Siegel.

Another prisoner, Brandon Mace, was sentenced to over six years in federal prison in May 2013 after filing fraudulent tax refund claims over a two-year period.

"He had it timed so he could pick it up after he got out of prison, but by the time he got there, the post office had sent the \$207,000 check back to the IRS," Siegel said.

In Minnesota, two prisoners face federal charges of conspiracy and filing false claims stemming from a tax fraud scheme they allegedly ran from prison. A federal indictment handed down in August 2014 alleges that Tanka James Tetzlaff, 39, and Tony Terrell Robinson, 30,

were behind the scam, collecting more than \$400,000 in fraudulent refunds by using the names and Social Security Numbers of fellow prisoners.

"The defendants prepared and filed the tax returns, or arranged for them to be prepared and filed, knowing they were false," according to the indictment.

George told the Congressional subcommittee that the Inspector General had warned as early as December 2010 that "significant problems exist with the IRS's efforts to identify the use of Social Security Numbers of and by prisoners to file false tax returns to commit tax refund fraud," noting that legislation passed in 2008 and again in 2010 gave the IRS the authority to disclose prisoner tax information to the Bureau of Prisons and state Departments of Corrections.

"However, as of October 2010, the IRS had not completed the necessary agreements to share prisoner information," George testified. "As a result, no information had been disclosed to either the Federal Bureau of Prisons or state Departments of Corrections at that time."

In January 2013, the American Taxpayer Relief Act gave the IRS permanent authority to share information with the Bureau of Prisons and state prison officials; however, no agreements were in place by January 2014.

George also faulted the IRS's process for reviewing and compiling prisoner data, saying the agency "lacked managerial oversight to ensure ... accuracy and reliability" of the prisoner data file. He called the omission "critical" because the file is used to flag phony tax returns before any refunds are issued.

As recently as December 2012, George said, the Inspector General warned that "despite increased efforts by the IRS to improve the accuracy of the Prisoner File, there were inaccuracies in the prisoner information, the file contained incomplete records, and not all prisons reported [data on] prisoners. As such, the controls used to ensure that the IRS identifies fraudulent refunds on tax returns prepared by prisoners were not fully effective."

George conceded that "most of these issues we identified are beyond the control

## EXECUTIVE CLEMENCY

**For Info. On Sentence Reduction through Executive Clemency:**

**NATIONAL CLEMENCY PROJECT**

**3907 N. Federal Highway, # 151**

**Pompano Beach, FL 33064**

**954-271-2304**

**[nationalclemencyprojectinc.com](http://nationalclemencyprojectinc.com)**

**(35-Years of Clemency & Parole Assistance)  
(Transfers Under The Int'l Prisoner Treaty)**





of the IRS because the IRS has to rely on information provided by the prisons to identify prisoner-filed tax returns.”

For example, in 2012, after the IRS informed prison officials of missing data or errors, only “ten of the 52 prison systems [including the Bureau of Prisons and District of Columbia] provided corrected data to the IRS,” according to an Inspector General’s audit released on December 18, 2012.

“We are committed to maintaining good working relationships with the correctional agencies and ensuring they understand our need for accurate data,” wrote Peggy Bogadi, head of the IRS’s Wage and Investment Division. “We believe these efforts will continue to improve the accuracy and reliability” of the agency’s prisoner data file.

George testified that “the IRS can do more to ensure that the Prisoner File is accurate and complete by taking further steps to improve its validation and verification processes.”

In spite of its focus on tax fraud, the 2012 Inspector General’s audit noted that many prisoners have a legitimate reason to file tax returns and obtain refunds, especially

if they are newly incarcerated or have investment income. The audit recognized, for example, that the IRS issued \$35.2 million in legitimate tax refunds to prisoners in 2010.

Further, tax fraud by prisoners represents only one of numerous problems facing the nation’s tax collection system. The Rasmussen College School of Business found, for example, that total estimated losses due to corporate tax evasion in 2009 were \$29.3 billion, based on the estimated 84% compliance rate for individual filers.

And Citizens for Tax Justice (CTJ) reported in a 2011 study that 30 major corporations, including General Electric, Boeing, Verizon and Mattel, realized profits exceeding \$205 billion from 2008 to 2011, yet paid no federal income tax between 2008 and 2010. One year later, 26 of those companies – including online retailer Amazon, which made billions in 2011 sales – had still paid no federal income tax, CTJ found.

If those companies had “paid the full 35 percent corporate tax rate over the 2008–11 period,” the organization reported, “they would have paid \$78.3 billion more in federal income taxes.”

Which indicates that the real criminals committing tax fraud can be found in corporate boardrooms, not among prisoners. ■

Sources: “*Testimony of the Honorable J. Russell George, Treasury Inspector General for Tax Administration, before the Committee on Appropriations, Subcommittee on Financial Services and General Government, ‘Over-sight Hearing – Internal Revenue Service,’ (February 26, 2014); ‘Further Efforts are Needed to Ensure the Internal Revenue Service Prisoner File is Accurate and Complete,’ Treasury Inspector General for Tax Administration, Reference No. 2013–40–011 (December 18, 2012); www.accountingtoday.com; www.thinkprogress.org; www.rasmussen.edu; Associated Press; www.newsnet5.com; www.9news.com; www.forbes.com*

### **Hepatitis & Liver Disease: A Guide to Treating & Living with Hepatitis & Liver Disease**

Revised ed. By Dr. Melissa Palmer  
See page 61 for more information.

- \* *Post-Conviction Specialists (Habeas Corpus/2254/2255/AEDPA/Procedural Bars/Coram Nobis/PRP/Certiorari/Sentence Modifications/DNA and more).*
- \* *All 50 States, D.C., Federal District/Appellate and Supreme Court.*
- \* *Special programs available for Veterans.*
- \* *Payment plans available.*
- \* *Now accepting Credit Cards.*
- \* *FREE initial consultation (send SASE)*
- \* *CALIFORNIA INMATES: We do 2-3 striker VARGAS petitions*
- \* *FEDERAL INMATES: We do “Drugs Minus Two” Petitions which are RETROACTIVE!*
- \* *SPECIAL RATES FOR PLN SUBSCRIBERS!*

### **Legal Insights Inc.**

25602 Alicia Parkway Suite 323

Laguna Hills, CA 92653

714-941-0578

info@legalinsights.org

www.legalinsights.org

A California 501(c)(3) Non-Profit Organization

## **Help From Outside, For Humanity Inside.**

*Offering basic services on the outside.*

The logo for Help From Outside (HFO) is prominently displayed in the center. Surrounding it are several circular icons representing different services: Finance & Business (with a dollar sign and bar chart), Social Networking (with a network diagram), Paralegal (with a gavel and document), Administrative (with an envelope), Information (with a globe and magnifying glass), Phone (with a telephone handset), and Creative (with an open book). Below the icons, there is a text box with a quote from T. Brown: “HFO has excellent business etiquette and ethics.” and another quote from A. Mitchell: “I like that you sent a personal letter. HFO is more personable than your competitors.”

Help From Outside understands what you’re going through. We can help you accomplish the things you need to get done but can’t.

We offer:

- High standards & ethics
- Timely & professional services
- Personal touch

**WE’VE MOVED! PLEASE CONTACT US AT OUR NEW ADDRESS:**

For a brochure and application please send a SASE to:  
Help From Outside | 2620 Bellevue Way NE #200 | Bellevue, WA 98004  
206.486.6042 | www.helpfromoutside.com

# Texas Prison Population Drops as Guard Shortage Persists

by Matt Clarke

**I**N SPITE OF A THREE-YEAR DOWNWARD trend, Texas continues to lead the nation with the largest state prison population. At the same time, the state has pursued a variety of incentives to address a chronic shortage of prison guards.

The population of the 109-facility Texas Department of Criminal Justice (TDCJ) fell from about 156,500 prisoners in mid-2011 to just over 154,000 in mid-2012, then to around 150,400 by November 2014 – including both TDCJ prisons and state jails. [See: *PLN*, Nov. 2013, p.26].

Regardless, Texas still leads the nation in terms of state prison populations because it did not reduce its population as quickly as the former leading state, California. California's prison population declined from over 160,000 to around 134,000 by diverting non-violent prisoners to county jails to comply with a federal court order to reduce the state's badly overcrowded prison system. [See: *PLN*, July 2011, p.1].

"It's real. It's happening, not only in Texas, but around the country," said Austin-based criminal justice consultant Tony Fabelo, who, as head of the Texas Criminal Justice Policy Council, advised state officials during the tripling of the TDCJ's prison bed capacity in the 1990s. "The challenge is to sustain the outcomes to see how far you can go in downsizing prisons. I have my doubts, but it's an interesting time for criminal justice."

The Texas Legislative Budget Board also had its doubts. In June 2012, the board released a report predicting that the drop in the state's prison population would

continue only until 2014, and that by 2015 the number of prisoners could again exceed TDCJ's capacity.

Analysts trace the recent decline in Texas' prison population to the success of a variety of alternative sentencing initiatives. For example, a package of sentencing reforms passed by the state legislature in 2007 allowed defendants to be diverted from prison into rehabilitative programs. Those reforms, combined with an aging state population, a decrease in the crime rate and changes in demographics, allowed the prison population to shrink even while Texas experienced an increase in its general population.

The 2007 legislative reforms were driven by Republicans who pushed fiscal conservatism over previous tough-on-crime and lock-'em-up-and-throw-away-the-key political philosophies.

"Policies in various states are finally catching up with what we know works," stated Marc Levin, director of the Center for Effective Justice and a national leader in the Right on Crime campaign for smarter criminal justice solutions.

"For most nonviolent offenders, community-based initiatives are much cheaper and have much better outcomes," Levin said. "In this time of tight budgets and programs that work, this is the conservative thing to do."

The reforms in Texas included special courts established in large cities for cases involving drugs, veterans, drunk driving and prostitution. Courts now offer programs and intensive supervision aimed at changing defendants' lives without sending them to prison.

Concurrently, the state expanded treatment programs for prisoners and upgraded parole supervision with electronic monitoring and newly-developed risk assessment tools. According to the TDCJ's Statistical Report for fiscal year 2013, 114,225 offenders were on some type of parole or community supervision.

An emphasis on community-based probation for non-violent defendants resulted in a higher success rate for both adults and juveniles, which proved so successful that the Texas Youth Commission (now the Texas Juvenile Justice Department) was able to close half the state's

juvenile facilities.

"We're definitely going to look at what works and what doesn't – and we know that treatment and rehabilitation and community justice programs work," said state Senator John Whitmire, who chairs the Senate Committee on Criminal Justice and sponsored many of the 2007 reforms.

"Prisons should be reserved for the worst of the worst, the violent criminals, murderers, child molesters we should definitely be afraid of. We have a lot of other inmates who could probably be housed someplace else, at less cost," Whitmire said.

The 2007 legislative reforms did little to benefit prisoners who were already incarcerated when the new laws were enacted, however, because they were designed to divert offenders away from prison, not release them.

But if the Texas Legislative Budget Board's prediction comes true and the number of prisoners begins to increase, the state could face an even worse shortage of guards to man its correctional facilities. To keep that from happening, state officials have offered a number of incentives to attract new recruits to shore up prison staffing levels.

A resurgent Texas economy – especially in the oil and gas industry – has led to many vacancies among guard ranks. "With energy production increasing dramatically in South and East Texas, most [prison guards] can make twice as much in the energy sector," explained Lance Lowry, head of Local 3807 of the American Federation of State, County and Municipal Employees (AFSCME), which represents Texas prison guards.

"We can't compete with the private sector in these critical areas," admitted Bill Stevens, director of the TDCJ's correctional institutions division.

In January 2014, TDCJ Executive Director Brad Livingston approved increasing the recruiting bonus to \$4,000 for new guards who sign one-year contracts and agree to work at one of 15 understaffed facilities located in rural areas, or in areas where jobs are available in the oil and gas industry.

"The recruitment and retention of correctional officers is a top priority for the agency," TDCJ spokesman Jason Clark

**SMITH'S GUIDE to  
HABEAS CORPUS RELIEF**  
for State Prisoners under 28 U.S.C. §2254

Example pleadings from the initial habeas corpus petition to the final petition for a writ of certiorari. Let Smith guide you step-by-step through the federal courts with confidence. 380 pages.

\$24.95 + \$6.95 shipping & handling. In CA add \$2.18 sales tax. Sent via USPS media mail. Money orders, personal or institutional checks ONLY. Send \$31.90 (In CA, \$34.08) payable to Roberts Company. Send name, address, prisoner #, and payment to:  
**Roberts Company, 15412 Electronic Lane #101  
Huntington Beach, CA 92649**  
Also available on Amazon.com

wrote in an email to the *Huntsville Item*. "The recruitment bonus is another tool the agency is using to attract applicants to apply for positions at units that are facing staffing challenges. We understand that the correctional officer position is one of the most demanding jobs in all of state government."

The TDCJ also recruits new guards at job fairs. "It's a rewarding career to be a correctional officer," explained Earl Brown, a TDCJ representative who attended three job fairs in November 2013. "We're trying to get as many applicants as we can who are qualified."

Brown said prison guard salaries range from \$2,435 to \$3,250 per month, with more for applicants who hold a Bachelor's degree or have at least two years of active military service. "The salary is competitive. We have great benefits," he added.

But union president Lowry blasted Texas lawmakers for treating guards "as the ugly stepchild of the criminal justice system" when negotiating a 2013 pay hike. In a press release, Lowry faulted the legislature for granting guards a 5% raise over two years while other state law enforcement officers received 10%. He said actual take-home pay grew only slightly more than 1% in September 2013 due to an accompanying increase in the amount that TDCJ employees pay towards retirement.

The fact that many top TDCJ administrators received higher raises – ranging from 8 to 23% – did not help alleviate discontent among the prison system's rank-and-file.

Lowry also blamed lawmakers for

"being unrealistic on their [sic] attempt to address chronic staffing demands now in the thousands," and said he expected staffing at TDCJ facilities "to only get worse."

As another way to reduce high turnover rates among prison guards, the TDCJ is currently making mobile home parks and dorm housing available at certain prisons that guards can rent at reduced rates, to

counter the boom-town explosion in rental costs near oil and gas fields.

As of November 2014, the TDCJ had more than 3,300 vacant guard positions. ■

Sources: *Austin American-Statesman*, [www.mcclatchydc.com](http://www.mcclatchydc.com), [www.correctionsone.com](http://www.correctionsone.com), <http://gritsforbreakfast.blogspot.com>, [www.kxii.com](http://www.kxii.com), *The New York Times*

## SUBSCRIPTION MADNESS 2014

Our Subscription Madness promotion has been so successful in the past that we have decided to offer it again!

PLN is offering a discount on blocks of 2 or 4 one-year subscriptions for any person not a current or former subscriber who has a U.S. address, whether they are imprisoned or not. Subscription Madness is the only opportunity attorneys, librarians and corrections professionals have to receive a PLN subscription at a fraction of the normal rate of \$90 per year, and for prisoner family members and concerned activists to subscribe at a steep discount from the normal rate of \$35 per year. Prisoner subscriptions are also less than the normal \$30 per year. Check out these discounts!

- **\$50 buys 2 one-year subscriptions (\$25 each)**
- **\$80 buys 4 one-year subscriptions (\$20 each)**

If you want to take advantage of Subscription Madness but are stumped for people to send them to, PLN can provide names of indigent prisoners who would love a PLN subscription. Use a separate piece of paper to order by mail, call our office to order with a credit card, or go to our website to order online. **No Renewals!** Sorry, but Subscription Madness is for new one-year subscriptions only, and cannot be used to renew or extend a current or former subscription. PLN is a 501(c)(3) non-profit. (Subscription Madness 2014 expires 12-31-2014).

**Prison Legal News, PO Box 1151, Lake Worth, FL 33460**  
**561-360-2523; [www.prisonlegalnews.org](http://www.prisonlegalnews.org)**

### LAW OFFICES OF

**ELMER ROBERT KEACH, III**



Law Offices of Elmer Robert Keach, III, PC  
One Pine West Plaza, Suite 109  
Albany, NY 12205-5531  
518.434.1718  
[www.keachlawfirm.com](http://www.keachlawfirm.com)

Attorney Bob Keach  
NITA Master Advocate  
Member, Multi-Million Dollar Advocates Forum  
Outside Counsel, Prison Legal News

**Experienced Civil Rights Attorney dedicated to seeking justice for those who are incarcerated**

*Custodial Death Cases • Wrongful Arrest and Incarceration*  
*Medical Indifference Cases • Corrections and Police Brutality*  
*Sexual Abuse and Assault • Illegal Strip Searches*  
*Class Actions • First Amendment Litigation*

**WHEN YOU OR A LOVED ONE HAVE BEEN WRONGED,  
YOU HAVE A VOICE.**

Attorney Keach prefers all inquiries by mail to be typed, and limited to five pages.  
DO NOT SEND UNSOLICITED RECORDS. THEY CANNOT BE RETURNED.  
Make sure to exhaust your administrative remedies and comply with state law notice requirements, if applicable, to preserve state law intentional tort/negligence claims.

# BOP Criticized for Denying Most Compassionate Release Requests

**T**HE FEDERAL BUREAU OF PRISONS (BOP) is operating under revised guidelines intended to expand the circumstances under which federal prisoners can seek a reduction in their sentences through the agency's Compassionate Release Program, following two scathing reports that took the BOP to task for mismanaging the program and routinely denying early release requests.

In fact, a review by the U.S. Department of Justice's Office of the Inspector General (OIG) determined that over the six-year period from 2006 through 2011, the BOP's failure to act on such requests led to the deaths of 13% of the federal prisoners who sought compassionate release due to a terminal illness, who died in prison before their requests were decided.

Further, by refusing to petition courts on behalf of prisoners who should be considered for compassionate release, the BOP is usurping the decision-making power of judges, argued a November 2012 report co-authored by Human Rights Watch (HRW) and Families Against Mandatory Minimums (FAMM).

The revised guidelines, included in a BOP Program Statement issued on August 12, 2013, "broadens the circumstances in which the BOP will consider [compassionate release] requests," according to a statement posted on the White House's website.

The revisions cover "terminal and non-terminal medical circumstances; circumstances for elderly inmates; circumstances in which there has been the death or incapacitation of the family member caregiver of an inmate's child; and circumstances in which the spouse or registered partner of an inmate has become incapacitated." [See: *PLN*, May 2014, p.40].

Some prisoner advocates expressed doubt that the new guidelines will make much difference. "I don't believe it's going

to change at all," said attorney Marc Seitles, who represents a prisoner denied early release despite suffering from terminal cancer. "It's still the same people making decisions."

The revised compassionate release guidelines, which officials said were implemented as part of a "Smart on Crime" initiative by the Department of Justice (DOJ), failed to address some of the recommendations contained in the OIG report and did not respond to criticisms raised by HRW and FAMM.

The BOP's Compassionate Release Program was established by the Sentencing Reform Act of 1984, which instituted determinate sentencing but also included so-called "safety valves" to allow for reductions in unjust or unfair sentences. Congress "intended the sentencing judge, not the BOP, to determine whether a prisoner should receive a sentence reduction," according to the joint HRW/FAMM report.

Under U.S. Sentencing Commission guidelines amended on November 1, 2007, judges are to consider "extraordinary and compelling" circumstances that merit a prisoner's early release, such as a terminal illness, incapacitation or the death of a prisoner's spouse that would force his or her children into foster care.

But to take advantage of the compassionate release provisions, prisoners must submit copious amounts of paperwork which must then be reviewed and approved by a string of federal bureaucrats before the request is even submitted to a judge for consideration. According to the U.S. Government Accountability Office, the BOP submits such requests "infrequently."

In fact, the OIG report found that of the approximately 214,000 federal offenders housed in BOP-operated or contracted facilities, an average of "only 24 prisoners are released each year through the BOP's compassionate release program."

"I urged more release for older, chronically ill offenders who couldn't fight their way out of a paper sack, but the [BOP] Central Office was simply not interested," retired federal prison warden Joe Bogan was quoted in the HRW/FAMM report, which included more than five dozen interviews with current and former BOP officials, federal prisoners and their family members, attorneys and advocates.

The review process under the Compas-

sionate Release Program begins when a prisoner submits a request to the warden. According to the OIG's summary of the necessary steps, "the request must include the extraordinary and compelling circumstances that the inmate believes merit consideration; a plan for where the inmate will reside if released; and how he or she will support him- or herself if released. If the basis for the inmate's request is due to the inmate's health, information about where the inmate will receive medical care and how it will be paid for must also be included."

If the warden approves the request, it is forwarded to the BOP Regional Director; if approved at the regional level, the request is then submitted to the office of the BOP's General Counsel, which solicits opinions from BOP medical and administrative officials and from the U.S. Attorney's Office. If the review results in approval, the request moves up to the BOP Director.

If the Director approves the compassionate release request, the BOP contacts the U.S. Attorney's Office in the jurisdiction where the prisoner was sentenced; an Assistant U.S. Attorney then petitions the federal district court. The prisoner is finally released only if and when the court rules favorably on the petition.

The request can be denied at any step during the process, and prisoners have the right to appeal only if the warden or Regional Director rejects their request. The OIG report noted that a rejection by the BOP Director "constitutes a final administrative action that the inmate cannot appeal."

The "BOP has arrogated to itself discretion to decide whether a prisoner should receive a sentence reduction, even if the prisoner meets its stringent medical criteria," the HRW/FAMM report stated. "In doing so, the Bureau has usurped the role of the courts. Indeed, it is fair to say the jailers are acting as judges."

Some defense attorneys agreed. "The Bureau of Prisons should be letting judges have the opportunity to decide every time extraordinary and compelling reasons come to their attention, and [they are] not doing that," said Steve Sady, a federal public defender who represents prisoners requesting compassionate release. "We believe that, under the statute, the sentence is for the judge to decide."

## Writing to Win

Need to write better? *Writing to Win* will teach you the basics of how to compose clear and convincing written and oral legal arguments! 270 pages packed with solid, practical advice and tips.

\$19.95 from PLN's Book Store!  
See page 61 for more information.



The “BOP has sharply limited the grounds for compassionate release, refusing to seek a sentence reduction except when the prisoner is expected to die within a year or is profoundly and irremediably incapacitated,” the HRW/FAMM report continued. “It has not utilized the broader range of medical and non-medical circumstances that the Sentencing Commission has described as warranting consideration for compassionate release.”

Instead, “when reviewing prisoner requests for compassionate release, the BOP makes decisions based on the very factors that Congress directed the courts to consider,” noted the HRW/FAMM report. “For example, the BOP determines whether an otherwise deserving prisoner might re-offend, how a victim or the community might react to early release, and whether the prisoner has been punished enough.”

The report argued the BOP cannot make such independent and impartial determinations because the agency “is a component of the [Department of Justice], directed and supervised by the Deputy Attorney General.” And in spite of what the DOJ has acknowledged is an unsustainable \$6.2 billion annual BOP budget and an expanding federal prison population, it continues to ignore even the most fundamental human rights principles.

“In recent years,” the HRW/FAMM report stated, “DOJ has taken policy positions averse to any but the most restrictive interpretation of compassionate release, favoring finality of sentences over sentence reductions for extraordinary and compelling reasons.”

The OIG report placed the blame squarely on the BOP: “We found that the existing BOP compassionate release program has been poorly managed and implemented inconsistently, likely resulting in eligible inmates not being considered for release and in terminally ill inmates dying before their requests were decided.”

The OIG also confirmed the findings in the HRW/FAMM report that the BOP improperly restricts compassionate release requests to only those prisoners with terminal medical conditions. “We ... found that although the BOP’s regulations and Program Statement permit non-medical circumstances to be considered as a basis for compassionate release, the BOP routinely rejects such requests and did not approve a single non-medical request during the 6-year period of our review.”

Even when requests are filed by prisoners who have only a short time to live, the OIG observed there were no administrative deadlines for when BOP officials must act. “Not all institutions have timeliness standards, and for those institutions that do, the time frame ranges from 5 to 65 days,” the OIG report noted.

To compound the problem, the BOP has no procedures for tracking compassionate release requests. “[T]he BOP cannot determine if requests are processed in a timely manner because the BOP does not track the time it takes to approve or deny requests,” the OIG wrote. “As a result, the BOP cannot determine if delays in the process exist, take corrective actions where delays occur, or ensure that inmates who may be eligible for

the program, particularly those with terminal illnesses, are considered for release in a timely manner.”


In response to the OIG’s recommendations, BOP officials promised to correct the deficiencies cited in the report.

The HRW/FAMM report went further, recommending that the BOP “reconceptualize[] its view of compassionate release” requests so that it acts independently of the Department of Justice and fulfills the intent of the guidelines relative to such requests.

The report also recommended that, until Congress amends the Sentencing Reform Act to explicitly grant prisoners the right to petition for sentence reductions themselves, no DOJ official should “object to bringing compassionate release motions on grounds of public safety, sufficiency of punishment, or other considerations that belong within the courts’ purview.”

“Keeping a prisoner behind bars when it no longer meaningfully serves any legitimate purpose cannot be squared with human dignity and may be cruel as well as senseless,” the HRW/FAMM report concluded. ■

Sources: “*The Federal Bureau of Prisons’ Compassionate Release Program*,” U.S. Department of Justice, Office of the Inspector General, Evaluation and Inspections Division, No. I-2013-006 (April 2013); “*The Answer is No: Too Little Compassionate Release in U.S. Federal Prisons*,” Human Rights Watch and Families Against Mandatory Minimums (November 2012); [www.hrw.org](http://www.hrw.org); [www.propublica.org](http://www.propublica.org); [www.whitehouse.gov](http://www.whitehouse.gov)



## STAND UP FOR YOUR PEOPLE

A book about Native American religious rights  
in prison. Non-fiction, 300 pg. E-book \$4.25

Order Today

**Only \$14.95**

3.99 s/h


SOFT COVER

Midnight Express Books

Box 69, Berryville, AR 72616

[www.MidnightExpressBooks.com](http://www.MidnightExpressBooks.com)

<http://standup4yourpeople.wordpress.com>



### Know What's Good On TV With Channel Guide magazine

- Daily schedules for **over 120 channels**
- Weekly **TV best bets**
- **Over 3,000 movie listings**
- **TV Crossword, Sudoku, celebrity interviews** and more
- **1 Year (12 issues) for just \$35**

**Mail your \$35 check or money order payable to Channel Guide Magazine to:**  
 Channel Guide Magazine AAKPLNG  
 PO Box 8501, Big Sandy, TX 75755-8501  
**Include your name, ID number and address.**  
**Or call 866-323-9385 or 903-636-1107**

# Washington Undersheriff Sentenced to Six Months for Stealing Bail Money

**C**LAIMS OF SUBSTANCE ABUSE PROBLEMS and poor physical health don't often help criminal defendants trying to mitigate their prison sentences. Carole J. Lepiane, the former undersheriff for Walla Walla County, Washington, is apparently an exception.

Lepiane, 59, who used a walker to scoot her way into a U.S. District Court on January 10, 2013, was subsequently sentenced to just six months in federal prison for embezzling more than \$67,000 in cash bail posted for prisoners at the county jail. As part of a plea deal she also agreed to pay \$81,271.63 in restitution – to cover both the money she stole and a county audit conducted in her criminal investigation – and must serve a year on supervised release, including four months in a residential re-entry program.

In her pre-sentence remarks to federal judge Frederick Van Sickle, Lepiane apologized to everyone except the county taxpayers and jail prisoners from whom she stole.

"I'm very sorry for any actions I took that were detrimental to my co-workers, my family or my boss, Sheriff Mike Humphreys," Lepiane said. "He did not deserve the stress, and I hope I can regain the trust of my [former] co-workers."

Lepiane served as Walla Walla County undersheriff for 10 years until July 2009, and had been dealing with some kind of substance abuse problem involving either drugs or alcohol.


According to court records, on 50 separate occasions between February 2004 and June 2009 she embezzled cash bail that was posted for Walla Walla County prisoners. The money Lepiane stole was to be deposited

into the Sheriff's Office trust account.

Instead, Lepiane deposited the purloined funds into her personal bank account and reportedly used them to shop online. To conceal her crimes, she deposited into the trust account monthly checks to the Sheriff's Office from Evercom, the company that manages and profits from the jail's phone system that prisoners must use.

Judge Van Sickle told Lepiane that her actions put the Walla Walla County Sher-

iff's Office in a negative light and hurt its credibility; he also said her crimes were "a breach of trust." Ultimately, however, Van Sickle indicated he felt sorry for Lepiane, noting that she had mobility problems and was taking medication.

Lepiane was released from federal prison after serving her six-month sentence on December 23, 2013. 

Sources: *Tri-City Herald*, [www.fbi.gov](http://www.fbi.gov)

## Deportations Still High Despite Decline from Record Levels

by Derek Gilna

**A**S POLITICAL EFFORTS TO REFORM THE nation's immigration laws continue to falter despite garnering headlines and generating contentious public debate, the latest statistics from Immigration and Customs Enforcement (ICE) reveal that undocumented immigrants continue to be deported in large numbers.

Even though deportations fell last year from a record level in 2012, critics argue that a significant number of immigrants were "removed" for no crime other than being in the U.S. illegally – which historically has been a civil offense.

ICE officials, meanwhile, hailed the deportations as being consistent with the agency's mandate, stating "that 98 percent of removals met one or more of the agency's civil immigration enforcement priorities."

In fiscal year 2013, ICE deported 368,644 people – a 10% decline from 2012's record-setting 409,849 deportations. The agency said that of the people deported in 2013, nearly 64% were caught while, or shortly after, attempting to illegally enter the United States. The rest were apprehended in the interior of the country.

"The FY2013 numbers make clear that we are enforcing our nation's laws in a smart and effective way, meeting our enforcement priorities by focusing on convicted criminals while also continuing to secure our nation's borders," said then-ICE Acting Director John Sandweg.

ICE reported that 59% of the deportees in 2013 had been convicted of a criminal

offense, "and that number rises to 82 percent for individuals removed from the interior of the U.S."

However, Immigration Impact, an advocacy project of the American Immigration Council, said the data also revealed "the extent to which immigration enforcement resources are still devoted to apprehending, detaining, and deporting individuals who represent no conceivable threat to public safety or national security."

"In fact," the group stated, "the overwhelming majority of people deported by ICE either have no prior criminal record or were convicted of misdemeanors" – usually minor offenses.

"ICE notes that 59 percent of all removals, 'a total of 216,810, had been previously convicted of a crime,'" Immigration Impact said. "That statistic leaves one to wonder about the other 41 percent – the 151,834 individuals without a prior criminal record who were also removed."

According to ICE, "other than convicted criminals, the agency's enforcement priorities include: those apprehended while attempting to unlawfully enter the United States, illegal re-entrants – individuals who returned to the U.S. after being previously removed by ICE – and immigration fugitives."

The numbers highlight the priority the federal government has placed on deporting undocumented immigrants since the 9/11 terror attacks. By way of comparison, deportations in the 1990s rarely topped 20,000 annually. Currently, more people

### Pen Pals for Prisoners

Your ad on the Internet worldwide:

One year for \$9.95. Mail name &

address for FREE order form or online:

[www.PrisonerPal.com](http://www.PrisonerPal.com)

PO Box 19689

Houston, TX 77224

are detained and deported each year by immigration enforcement agencies than are incarcerated in the federal Bureau of Prisons.

ICE has been the subject of criticism by immigrant-rights advocates who have complained about the agency's erratic, heavy-handed and selective enforcement that often sweeps up non-violent immigrants stopped for minor traffic violations, then holds them in prison-like facilities prior to deportation.

Nonetheless, in 2012, then-ICE

Director John Morton and Department of Homeland Security Secretary Janet Napolitano redirected ICE's resources to concentrate more on removing dangerous criminals, and issued new detainer guidelines for law enforcement agencies. The new policy focused on apprehending felons and repeat offenders, among other priorities, and applied to all ICE programs – including Secure Communities, which had been cited for abuses. [See: *PLN*, April 2013, p.1; March 2013, p.40; June 2011, p.43].

Immigration Impact noted that much

more needs to be done. "While ICE does indeed capture and remove potentially dangerous individuals, most of its resources remain devoted to the enforcement of a broken and unworkable immigration system," the group said. "The latest decline in removals notwithstanding, the U.S. deportation machine remains severely out of balance and lacking in either flexibility or meaningful opportunities for due process." ■

Sources: [www.ice.gov](http://www.ice.gov), [www.migrationpolicy.org](http://www.migrationpolicy.org), <http://immigrationimpact.com>

## D.C. Jail Guard Suicidal after Feces Thrown in Face, Sues DOC

**A** FORMER GUARD WITH THE DISTRICT of Columbia Department of Corrections (DOC) sued his ex-employer in November 2012, claiming he developed PTSD and suicidal tendencies after a prisoner threw feces in his face.

Guard Walter Sampson's altercation with the prisoner actually occurred in August 2006. Since then he took two years off work, underwent psychiatric treatment, returned to work and was subsequently admitted to a D.C. hospital on suicide watch.

Sampson's lawsuit claims the DOC refused "reasonable accommodation to the known physical and mental limitations" he experienced after the feces-throwing incident, in violation of the Americans with Disabilities Act (ADA).

While taking two years of disability for PTSD, Sampson saw a psychiatrist weekly – and then monthly – until he was cleared to return to work in a position that excluded contact with prisoners. He returned to the DOC in September 2008, escorting contractors to their work sites.

Sampson was reassigned twice over the following three months – first to the midnight shift at DOC headquarters, then transporting prisoners to and from the D.C. jail. Two days after he began the latter assignment, on January 6, 2009, his psychiatrist declared him a danger to himself and Sampson was admitted to a hospital with suicidal tendencies the following month.

In an amended complaint filed on March 26, 2013, Sampson alleged "that the

DOC denied him a reasonable accommodation in violation of the ADA by removing him from a position where he did not have contact with inmates."

He is suing for lost wages over a four-year period and compensatory damages for emotional distress.

In March 2014, the district court denied the DOC's motion to dismiss, finding service of process was timely and substituting the District of Columbia for the D.C. Department of Corrections, which lacked the capacity to be sued.

The case remains pending. See: *Sampson v. DC DOC*, U.S.D.C. (D. D.C.), Case No. 1:12-cv-01933-RWR. ■

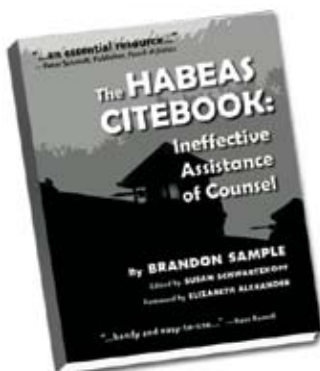
Additional source: *Washington Examiner*



**INMATE**  
CONNECTIONS.com

92% Response Rate in 2013! 75,000+ Hits Daily! A+ Rating with Better Business Bureau!  
Moneygram / Trugram accepted!  
Write for free brochure/application:  
**CONPALS@INMATECONNECTIONS.COM®**  
465 NE 181st Ave. #308 Dept. PLN  
Portland, OR 97230-6660  
(Send SASE for fastest reply)

Email inquiries and Federal Corrlinks users:  
**[info@convictpenpals.com](mailto:info@convictpenpals.com)**  
Since 2002



### FREE BOOK!

Get *The Habeas Citebook* with purchase of a 4-year subscription to *Prison Legal News*. Offer good for new subscriptions and renewals.

Special limited time only! All sales final and no refunds. Order now for this great deal worth \$49.95.

**Prison Legal News** • PO Box 1151 • Lake Worth, FL 33460  
Tel [561] 360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

# Oklahoma Supreme Court Remands Consolidated Sex Offender Registration Case

by Shepherd Litsey

ON NOVEMBER 19, 2013, THE SUPREME Court of Oklahoma affirmed in part, reversed in part and remanded for further proceedings a case involving a registered sex offender required to register for life due to an amended state law applied retroactively.

Christopher Luster pleaded guilty to second-degree sexual assault on April 22, 1992 in Texas and was sentenced to ten years deferred adjudication. He later moved to Oklahoma and began registering as a sex offender per Oklahoma's Sex Offender Registration Act (SORA) on September 25, 2003. Under the law at the time, he had to register for ten years. On November 1, 2007, SORA was amended and Luster was notified that his sex offender level was being increased and he would have to register for life.

Luster filed suit in 2011 to enjoin the Oklahoma Department of Corrections (DOC) from applying the amended SORA provisions, requesting removal from the registry and freedom from the registration requirement. Alternatively, he argued he should only have to register annually for ten years, with his registration term expiring in 2013. His petition led to the consolidation of 66 other cases raising similar claims.

Luster amended his petition to include all litigants with similar issues, which included three categories of plaintiffs – those with 1) convictions occurring before November 1, 1999; 2) non-aggravated convictions between November 1, 1999 and November 1, 2007; and 3) aggravated convictions between November 1, 1999 and November 1, 2007. He contended that offenders in the first two categories should have to register for no more than ten years and that the SORA amendments were not retroactive. The DOC filed a response brief insisting the legislature's intent was retroactivity.

The trial court ruled in favor of Luster on September 7, 2011, finding the amendments could not be imposed retroactively. The court listed by name the co-plaintiffs and what action the DOC was to take with each, and set the registration frequency at once per year for all who were still required

to register. The DOC appealed.

The Oklahoma Supreme Court cited two recent decisions in which it had held retroactive application of sex offender registration requirements violated the *ex post facto* clause of the state constitution. However, the Court found problematic the trial court's imposition of a "blanket one-year registration frequency to all consolidated plaintiffs who were not immediately removed from the registry."

"For the same reasons we held the provisions of SORA in effect upon a person being convicted in Oklahoma or entering Oklahoma are the only SORA provisions that shall apply to the sex offender, we hold the frequency of SORA verification

in effect at that time is also the applicable provision," the Court wrote. "The correct registration requirements to apply are those in effect when the sex offender was either convicted in Oklahoma or when a sex offender convicted in another jurisdiction enters Oklahoma and becomes subject to those registration requirements."

Accordingly, the Supreme Court affirmed the trial court's prohibition on retroactive application of the SORA amendments, reversed the trial court's blanket one-year registration frequency and remanded with instructions to review each co-plaintiff's case individually. See: *Luster v. State ex rel. Dept. of Corrections*, 2013 OK 97, 315 P.3d 386 (Okla. 2013). ■

## Florida Court of Appeals: Prison Guards Can Raise "Stand Your Ground" Defense

by Matt Clarke

ON MARCH 28, 2014, A FLORIDA COURT of Appeals held that a former Department of Corrections guard charged with aggravated battery for assaulting a prisoner was entitled to pursue a "stand your ground" defense pursuant to § 776.032, Florida Statutes.

While employed as a guard at the Lake Correctional Institution, Brad Heilman was involved in a physical altercation with prisoner Duane Royster. Royster suffered serious injuries, including multiple facial fractures, and Heilman was fired several days after the August 27, 2011 incident.

He was subsequently charged with aggravated battery and released on \$5,000 bond. He then filed a motion asking the trial court to grant a hearing and dismiss the charge based on the state's "stand your ground" statute, which provides immunity for people who use force in self-defense. The trial court denied the motion and hearing, citing *State v. Caamano*, 105 So.3d 18 (Fla. 2d DCA 2012). Heilman filed a petition for writ of prohibition in the Court of Appeals.

The appellate court found that *Caamano* did not apply. In *Caamano*, a police

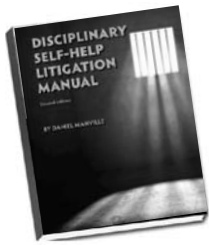
officer tried to use a "stand your ground" defense after being charged with attempted battery during the course of an arrest. The *Caamano* court held there were other statutes specifically preventing the prosecution of a police officer for justifiable use of force; therefore, those statutes took precedence.

There are no similar statutes that apply to prison guards. Instead, § 944.35(1)(a), located in the corrections code, specifies the situations under which a guard is authorized to use force and provides for disciplinary action, dismissal and/or criminal penalties for unauthorized use of force against prisoners. Differentiating between authorizing the use of force and justifying the use of force, the Court of Appeals held that § 944.35(1)(a) did not preclude a "stand your ground" defense for guards.

The Court therefore granted the petition, issued the writ of prohibition and remanded the case to the trial court to allow Heilman to raise a "stand your ground" defense. See: *Heilman v. State*, 135 So.3d 513 (Fla. Dist. Ct. App. 5th Dist. 2014). ■

Additional sources: [www.correctionsone.com](http://www.correctionsone.com), [www.thinkprogress.org](http://www.thinkprogress.org), [www.ocala.com](http://www.ocala.com)





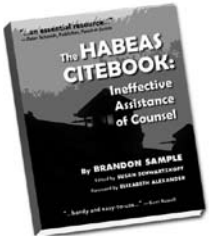
## ***Disciplinary Self-Help Litigation Manual, Second Edition***

**\$49.95**

**Dan Manville**

ISBN: 978-0-9819385-2-3 • Paperback, 368 pages

The *Disciplinary Self-Help Litigation Manual, Second Edition*, by Dan Manville, is the third in a series of books by Prison Legal News Publishing. It is designed to inform prisoners of their rights when faced with the consequences of a disciplinary hearing. This authoritative and comprehensive work educates prisoners about their rights throughout this process and helps guide them at all stages, from administrative hearing through litigation. The Manual is an invaluable how-to guide that offers step-by-step information for both state and federal prisoners, and includes a 50-state analysis of relevant case law and an extensive case law citation index.



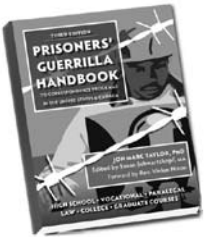
## ***The Habeas Citebook: Ineffective Assistance of Counsel***

**\$49.95**

**Brandon Sample**

ISBN: 978-0-9819385-1-6 • Paperback, 224 pages

*The Habeas Citebook: Ineffective Assistance of Counsel* is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an invaluable resource that identifies hundreds of cases where the federal courts have granted habeas relief to prisoners whose attorneys provided ineffective assistance of counsel.



## ***Prisoners' Guerrilla Handbook to Correspondence Programs in the United States and Canada, 3rd Edition***

~~\$49.95~~

Special sale price:  
**\$35**

**Jon Marc Taylor**

ISBN: 978-0-9819385-0-9 • Paperback, 224 pages

Author Jon Marc Taylor's third edition of the *Prisoners' Guerrilla Handbook to Correspondence Programs in the United States and Canada* is the latest version of this unique and highly successful guidebook for the prisoner-student. This invaluable tool and how-to manual provides the reader with step-by-step instructions to find the appropriate education program for correspondence high school, vocational, paralegal, undergraduate and graduate courses offered in the U.S. and Canada. This is the second book published by Prison Legal News Publishing.



## ***Prisoners' Self-Help Litigation Manual, 4th Edition***

**\$45.95**

**John Boston & Dan Manville**

ISBN: 978-0-1953744-0-7 • Paperback, 960 pages

The *Prisoners' Self-Help Litigation Manual*, in its much-anticipated fourth edition, is an indispensable guide for prisoner litigants and prisoner advocates seeking to understand the rights guaranteed to prisoners by law and how to protect those rights. Clear, comprehensive, practical advice provides prisoners with everything they need to know about conditions of confinement, civil liberties in prison, procedural due process, the legal system, how to actually litigate, conducting effective legal research and writing legal documents. It is a roadmap on how to win lawsuits.

- ☐ ***Disciplinary Self-Help Litigation Manual***
- ☐ ***The Habeas Citebook***
- ☐ ***Prisoners' Guerrilla Handbook***
- ☐ ***Prisoners' Self-Help Litigation Manual***

Shipping included in all prices.

**Order by mail, phone, or online.** Amount enclosed \_\_\_\_\_

By: ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name \_\_\_\_\_

DOC/BOP Number \_\_\_\_\_

Institution/Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



PO Box 1151 • Lake Worth, FL 33460  
Tel 561-360-2523 • [www.prisonlegalnews.org](http://www.prisonlegalnews.org)

## News in Brief

**Alabama:** Six people, including an Alabama state prison guard and two prisoners, were arrested on April 10, 2014 for their roles in a large-scale meth operation. Phillip Burgin, 23, was employed at the Kilby Correctional Facility before being stopped in Oklahoma while transporting 30 pounds of the drug. The prisoners, Alberto Trejo and Gumaro Calles, incarcerated at two other Alabama facilities, are believed to have helped orchestrate distribution of the meth using contraband cell phones. Also arrested were Stephanie Auban, 41, William Thomas Crane II, 36, and Miguel Calles-Gutierrez. All face federal charges that carry sentences ranging from 10 years to life.

**Arizona:** Joseph Andrew Dekenipp, incarcerated at the Pinal County jail, escaped on February 14, 2014 for a Valentine's Day date with his sweetheart. He suffered serious cuts while climbing two walls and squeezing through razor wire, and was arrested after he arrived at a local bar and grill to meet his girlfriend. Dekenipp now faces an escape charge in addition to his initial charges of suspicion of vehicle theft, trafficking in stolen property, driving on a suspended license and unlawful flight.

**Arizona:** A racially-charged brawl at the Arizona State Prison Complex-Winslow left several prisoners hospitalized with non-life threatening injuries. The fight broke out on March 20, 2014 between several dozen Black and Hispanic prisoners. Guards deployed non-lethal measures to quell the disturbance and the unit was locked down. Doug Nick, communications director for the Arizona Department of Corrections, said the incident was under criminal investigation.

**Australia:** Smoked oysters and premium ice cream sundaes were a planned distraction for prisoners expected to suffer from nicotine withdrawal following a May 5, 2014 smoking ban at all jails and prisons in Queensland. Officials anticipated an uptick in prison violence from the mood swings associated with quitting smoking, and corrections staff were provided with specialized training to deal with the issue. Employees as well as prisoners are subject to the smoking ban.

**California:** U.S. Attorney Benjamin B. Wagner announced on March 27, 2014 that a contract guard at the federal Taft Correctional Institution in the San Joaquin

Valley was indicted on charges related to smuggling drugs and other contraband into the MTC-operated facility. Ramon Cano, 28, allegedly conspired with prisoner Gerardo Alvarez-Montanez to bring heroin, methamphetamine, money and cell phones into the prison. A grand jury indictment charged the two men with conspiring to provide and possess contraband, distribution of a controlled substance and bribery of a public official. Montanez pleaded guilty to conspiracy on June 23, 2014 and was sentenced in September to five years in prison; Cano pleaded guilty in August 2014 and is scheduled to be sentenced on December 15, 2014.

**Connecticut:** Steven Wolff, a former utility system repair foreman at the Federal Correctional Institution in Danbury, was sentenced on March 12, 2014 to five months in prison for having sex with a prisoner. Wolff and the victim met in the boiler area to engage in sexual relations on several occasions. Another prisoner was given hair dye, candy, over-the-counter medication, greeting cards and other contraband for acting as a lookout for the pair. Wolff had previously pleaded guilty to sexual abuse of a ward on August 6, 2013.

**District of Columbia:** On April 15, 2014, President Obama granted commutation to a man whose federal prison sentence had been unlawfully extended by a typo in a court document. Ceasar Cantu, who was sentenced to 15 years, filed a motion to correct the error, which was denied by U.S. District Court Judge Jackson Kiser as being untimely. Cantu had been sentenced to 3½ extra years based on a mistake in his presentence report that raised his base offense level. White House officials said Obama's decision to reduce Cantu's sentence was because there was no other legal way to correct the mistake. Cantu is now scheduled for release in May 2015.

**Florida:** Highlands County Sheriff's Office spokesperson Nell Hays announced on March 2, 2014 that prisoners at the county jail had tested positive for scabies. Hays said jail staff had quickly moved into an "aggressive prevention and control mode" to quell the outbreak. Oral medications were provided to over 400 prisoners and all bedding, towels and uniforms, as well as the jail housing units, were to be treated. Scabies is a highly contagious skin rash caused by the *Sarcoptes scabiei* mite. Prisoners who

had been released around the time of the outbreak were advised to contact their doctors or the county health department.

**Florida:** On April 1, 2014, former Florida State Fraternal Order of Police general counsel Anthony M. Livoti, Jr., 65, was sentenced to 10 years in prison for his role in a Ponzi scheme that bilked investors out of more than \$800 million. Livoti was the only one of 12 defendants who did not accept a plea bargain. A jury found Livoti guilty after a three-month trial; he had originally faced up to 80 years on three fraud and conspiracy counts, and was found not guilty on 20 other related charges. He was also ordered to pay over \$826 million in restitution.

**Georgia (Europe):** Seventeen prisoners at the Geguti Penitentiary in the Eurasian nation of Georgia were hospitalized on February 10, 2014 after protesting mistreatment in the penal system by stabbing themselves. Hundreds of other prisoners participated in a hunger strike during the same protest action. Georgia's Minister of Corrections and Legal Assistance, Sozar Subari, denied the allegations of mistreatment and instead blamed Mafia leaders for initiating the hunger strike.

**Georgia (U.S.):** An attorney for Douglas County District Attorney David McDade announced on April 2, 2014 that McDade would retire from his position with the county. McDade had been under investigation for inappropriate spending and unauthorized use of county vehicles. A Georgia Bureau of Investigation probe was completed and McDade's attorney, Drew Findling, told news reporters that the case would not be presented to a grand jury. The investigation ended on September 26, 2014 when McDade's former office manager, Tammie Agan, pleaded guilty to 7 misdemeanor counts of theft by taking. She was ordered to pay \$7,400 in restitution.

**Indiana:** Officials at the Marion County Jail said cell blocks at the facility are used for different purposes up to six times a week, resulting in the confusion that led a female prisoner to be locked in a cell block with nine men on March 25, 2014. Although the woman alleged no wrongdoing by the other prisoners, that was not the first time such a mix-up occurred at the facility. Eight months earlier a woman had been locked in a cell with a male prisoner, whom she claimed sexually

assaulted her. Marion County Lt. Col. Gary Tingle said the jail had implemented new safeguards to ensure such a mistake would not happen again.

**Israel:** On April 10, 2014, an Israeli court imposed a fine equivalent to \$1,449 and loss of visitation privileges on a Palestinian prisoner, Abdul Karim Rimawi, who had smuggled his sperm to his wife, resulting in the birth of a baby boy. Although other Palestinian prisoners have successfully provided their wives with sperm to conceive children, according to a statement issued by the Palestinian Prisoner Club Association, "The punishment of Rimawi is the first such kind of punishment in the history of [the Israeli] courts."

**Kentucky:** Jail intake employee Joshua Ayers had been reprimanded at least eleven times for various policy violations at the Louisville Metro Department of Corrections, but remained employed until he was placed on administrative leave without pay following his arrest on March 24, 2014 for allegedly stealing \$100 from a prisoner being booked into the facility. Surveillance video from the booking area showed Ayers leaving the room with the prisoner's property; suspicious co-workers notified the police department's Public Integrity Unit, which opened an internal investigation.

**Michigan:** Jonathan Kermeen, a former Ottawa County jailer, pleaded guilty in February 2014 to two counts of second-degree criminal sexual conduct, and was sentenced on March 10, 2014 to five to fifteen years in prison. Kermeen admitted to having sexual contact with a female prisoner on two occa-

sions, as well as to a third incident involving another prisoner. His plea deal included an agreement that prosecutors would not pursue additional charges. *PLN* previously reported Kermeen's suspension and subsequent arrest. [See: *PLN*, June 2014, p.56].

**Mississippi:** On March 31, 2014, a riot at the Hinds County Detention Center left one prisoner dead, seven others injured and the unit where the fight occurred in ruins. Markuieze Sherod Bennett, 21, died from stab wounds, but no employees were injured according to authorities. The county's Board of Supervisors declared an emergency at the jail and said the county is looking into the possibility of building a new facility. A spokesman for the Board said the age and condition of the jail was to blame for the fight, and that the normal bidding process would be set aside to allow the quick purchase of new radios and cameras for the detention center.

**Missouri:** A former guard at the U.S. Medical Center for Federal Prisoners in Springfield was sentenced to six years in prison on March 31, 2014 for hiring a hit man to kill his wife's ex-husband. Robert W. Jones contacted a prisoner at the facility while he was employed there, and asked for help in the murder-for-hire scheme. Jones is a veteran, and two doctors testified at sentencing how post traumatic stress disorder played a role in his actions. Sentencing guidelines recommended eight to ten years for the charge of using a telephone with the intent that a murder be committed for payment. Jones had been arrested after providing \$1,500 to an undercover FBI agent to commit the murder.

**Montana:** On February 23, 2014, prisoners reported a bad smell in the west block of the Ravalli County jail. Several days later, jail officials announced that the odor had come from a propane exhaust in the boiler. A number of prisoners reported headaches, nausea and burning eyes, and three people were treated and released at a local hospital; prisoners were evacuated to the jail's library while the boiler area was ventilated. Carbon monoxide levels were checked before the prisoners returned to the cell block.

**New Mexico:** Torrey Chambers was indicted on eight counts of rape on March 25, 2014 for using his position as a Bernalillo County jailer to not only repeatedly rape prisoners, but to assist a friend in committing rapes as well. At the time of Chambers' indictment, the county had already settled a lawsuit filed by three of the prisoners for \$925,000. Due to a clause in a union contract, Chambers was placed on paid rather than unpaid leave while an internal investigation was conducted.

**New York:** Kimberly Ricci, a former teacher at the Washington Correctional Facility in Comstock, was arrested on February 7, 2014. State officials determined that Ricci, 24, had been bringing heroin and needles into the prison, using the drugs and having sex with a prisoner. She was arraigned and released on her own recognizance, then pleaded guilty to a felony drug count on October 1, 2014. She faces up to 7 years in prison; the prisoner was not charged.

**New York:** Elizabeth Camue Martinez, 33, and her prisoner-husband, Andres Martinez, 28, were indicted on February



# 12 FREE ISSUES!

Send self-addressed, stamped envelope to address below and receive 1 FREE - 1 YEAR magazine subscription!

Quarterly drawing WINS \$100! (Void in New York)  
(Last Quarter's winner from Airway Heights, WA.)

TELL YOUR FRIENDS! ACT NOW!!



PO Box 2063 • Fort Walton Beach FL. 32549

[www.InmateMagazineService.com](http://www.InmateMagazineService.com)

## Inmate Magazine Service

## News In Brief (cont.)

6, 2014 in connection with the overdose deaths of two prisoners at the Attica Correctional Facility. The bodies of Saleem Ali and Glendon Jackson were discovered in their cells on December 5, 2013; both had died from a lethal dose of pure Fentanyl, an opiate about 100 times stronger than morphine. The September 2013 death of another Attica prisoner, Avery Cureton, was also connected to the drugs. Mrs. Martinez was charged with smuggling heroin and marijuana into the prison and giving it to her husband. She pleaded guilty to intent to distribute and conspiracy to possess with intent to distribute on September 24, 2014.

**Nigeria:** Marilyn Ogar, spokeswoman for Nigeria's State Security Service, announced on March 31, 2014 that 21 people had died in a shootout during an attempted

prison escape in Abuja, the nation's capital. Ogar declined to identify whether the dead were prisoners or security personnel; however, a prison security source confirmed that at least one guard had been killed. Jail breaks are common in Nigeria. On March 14, 2014, members of Boko Haram, an Islamic militant group, freed dozens of prisoners from Nigeria's main military barracks.

**North Carolina:** On April 10, 2014, Frank Arthur Janssen, the father of a Raleigh-area prosecutor, was reunited with his family after a five-day kidnapping ordeal. Five people were arrested for their participation in the plot, which was intended to benefit Kelvin Melton, a prisoner serving a life sentence, whom Janssen's daughter had prosecuted. An FBI hostage rescue team located and recovered Mr. Janssen; he was unharmed. Neighbors said Janssen is a high-security government contractor, and it was initially believed the kidnapping was

related to his job.

**Oklahoma:** Frank Kirk, a 70-year-old attorney, tricked a female prisoner into believing that he represented her and convinced her to expose herself and masturbate in exchange for "legal fees." Kirk was arrested on five misdemeanor counts of lewdness on March 3, 2014 after six visits with the prisoner, during which he smuggled in a sex toy, lubricant, baby wipes and a cell phone in his laptop bag. The woman agreed to cooperate with investigators after she realized Kirk was not her lawyer. Kirk was further charged on March 31 with a felony count of attempting to prevent a witness from testifying, after trying to make the prisoner withdraw her statement. In October 2014, Kirk received a suspended sentence of one year and a \$50 fine; he was also ordered to surrender his law license.

**Oklahoma:** A nurse employed by Corrections Corporation of America at the

### PLN Classifieds

#### **CHEAP in-state phone# for 1-time**

\$50 set-up fee. Send SASE to  
Tim's Inmate Mail Service  
3301-R Coors Rd NW #247  
Albuquerque, NM 87120-1292.

#### **AMBLER DOCUMENT PROCESSING**

Type, Design and Prepare  
Manuscripts for Self-Publishing  
Reasonable Rates! Accept all Genres!  
P.O. Box 938, Norwalk, CT 06852

#### **\*\*PRO SE LITIGATION MADE EASY\*\***

Dozens of forms, instructions,  
sample legal briefs and complete  
motion packs on prisoner issues  
in state & fed courts. Send SASE  
#10 env. for catalog to: B & B  
Enterprises, 3308 Rt. 940 Suite  
104-3016, Mount Pocono, PA 18344

#### **BB vo. 6 Naughty Celebs \$12.00**

Full Color Cat, 1000 options  
Non-nude – Huge variety  
Celebs in the freakiest poses  
Send 30 stmps or \$12.00 MO  
To: On Demand Inmate Services  
PO BOX 81-PLN, Chelt, PA 19012  
US Female Pen pal list \$22 M/O

#### **The VOICES.CON Newsletter – Free**

Written by lifers for lifers. For info on how  
to receive Voices.Con monthly, send  
SASE to: PO Box 361, King City, CA 93930.  
On the web at: [VoicesDotCon.org](http://VoicesDotCon.org);  
Email: [Publisher@VoicesDotCon.org](mailto:Publisher@VoicesDotCon.org)

#### **A DEGREE/ORDINATION FROM PRISON**

Correspondence Courses via mail  
INT'L CHRISTIAN COLLEGE & SEMINARY  
PO BOX 530212, Debary, FL 32753  
Associates thru PhD \*ACCREDITED\*  
Tuition as Low as \$12.95 a month  
Send SASE for a Free Evaluation  
[www.icccscampus.org](http://www.icccscampus.org)

#### **Connect To Outside World**

PP provides services via internet  
Your information Social networks  
5 sites 20 US 10 sites 35 US  
Free brochure Self stamped env  
Prisoner Promotions  
15050 Cedar Ave 116-166  
Apple Valley, MN 55124

#### **Penitentiary Ink**

We offer a variety of services  
Stamp buys, social media  
postings, shopping, copies, and  
SO MUCH MORE! Send SASE to  
85 W Combs #101-247 San Tan  
Valley, AZ 85140  
[penitentiaryink@outlook.com](mailto:penitentiaryink@outlook.com)

#### **Connect with friends and family**

Facebook page created and  
maintained for you. For more  
info send a SASE to  
ISN, 7749 Normandy, Suite 145 #317  
Jacksonville, FL 32221

#### **IF YOU WANT THE BEST TRY EPS!**

Legal Research & Forms, Internet  
& People Searches, Amazon Books,  
Erotic Photos & Stories, PenPals,  
Special Requests and Much More.  
Send SASE to: Elite Paralegal &  
Prisoner Services, PO Box 1717,  
Appleton, WI 54912

#### **You've tried the rest; now put us**

to the test. Quicker turn around  
(no waiting 4 weeks for your  
order like with other services)  
lower prices. We are DFL Research  
Services, 2851 Chloe Drive,  
Converse, TX 78109  
Send for information today

#### **FREE PULP-FICTION CATALOG**

Send \$3.99 USD for S&H  
This is a 136-page catalog with  
1650+ story/novel entries  
Detective, Mystery, Air, Western,  
Horror, Action, Science Fiction+  
Jaguar Books, 6881 Stanton Ave #F,  
Buena Park, CA 90621



company's Cimarron Correctional Facility was charged on March 25, 2014 with sexual battery and providing contraband to a prisoner. Linda Bogaski, 49, allegedly touched the prisoner's genitals and brought him tobacco and a cell phone. Bogaski was informed of the charges and ordered to voluntarily appear in court before an arrest warrant was issued. She made her appearance and subsequently pleaded guilty on June 20, 2014. As part of a plea deal, Bogaski was placed on one year's probation, fined \$500 and ordered to undergo a mental health evaluation and perform 100 hours of community service.

**Rhode Island:** On March 18, 2014, DOC Director A.T. Wall placed four employees on administrative leave after a local television station reported the results of an internal investigation into a séance held in the office of Assistant Corrections Director David McCauley. McCauley allegedly summoned prison guard Heather Anderson – who calls herself “The Mystical Medium” and claims to talk to the dead – to perform psychic readings in his office. McCauley was suspended along with Robert Vitale, warden of the DOC's central office, Gerald Masso, a security specialist, and DOC K9 officer Anthony Lucca.

**South Carolina:** A mentally ill pretrial

detainee at the Alvin S. Glenn Detention Center was assaulted by former guard Robin Smith on February 11, 2012. [See: *PLN*, Oct. 2013, p.56]. After entering a guilty plea to a civil rights violation, Smith was sentenced to 24 months in federal prison and three years of supervised release in April 2014. “What Robin Smith did was wrong,” said U.S. Attorney Bill Nettles. “At the base level, Mr. Smith kicked a man around who was so mentally ill he could not understand or follow the directions Smith was giving him. No just society can allow that kind of conduct on the part of a corrections officer to go unpunished.”

**South Carolina:** On March 18, 2014, DOC officials announced that several prisoners had been identified as the “stars” of a viral rap video that appeared to have been filmed and posted online from a prison cell at the Kershaw Correctional Institution. The video is believed to have been recorded with a contraband cell phone, and DOC officials said they had increased security and adopted new counter-measures to combat the flow of phones into the facility. The prisoners were transferred to other institutions.

**Tennessee:** A Lake County grand jury returned indictments against five people accused of smuggling drugs into the

Northwest Correctional Complex. Remeka Carraway, Latonya Johnson, Meri Kristin Doyle, Chelsey Pitts and prisoner Monterious Bell each face one count of introduction of contraband into a penal facility and conspiracy to introduce contraband into a penal facility. Doyle, Pitts, Carraway and Johnson were also charged with possession of a schedule VI drug with intent to deliver. Doyle and Pitts were formerly employed as guards at the prison, but had resigned several months prior to their March 12, 2014 arrests.

**Texas:** Following an internal affairs investigation, Harris County Sheriff's deputies arrested Dominique Duncan, 23, outside the county's jail complex on February 10, 2014 and charged him with possession of a controlled substance with intent to deliver. Duncan, who had been employed as a civilian jail guard since May 2013, was in possession of painkillers only available with a prescription. He was booked into the jail and later released on \$10,000 bond.

**Texas:** The Dallas County Sheriff's Department launched an investigation into a December 12, 2013 incident in which Robert Merrill, 30, was able to bring a loaded gun into the booking area of the Lew Sterrett Justice Center. “If a weapon

#### **MIDNIGHT EXPRESS BOOKS**

THE PREFERRED & ONLY FULL TIME company helping inmate authors publish books for 10+ years.  
PO Box 69, Dept PLN,  
Berryville, AR 72616  
Midnightexpressbooks.com  
Corrlinks: MEBooks1@yahoo.com

#### **200 RANDOM PEN PAL ADS**

Fresh off the Interweb  
15% with photos. Approximately  
½ USA ½ Overseas. No Two Lists  
Are The Same. Free Shipping  
Rush \$19.98 To: Girls and Mags  
P.O. Box 552-PP  
North Dighton, MA 02764

#### **Education Behind Bars Newsletter**

Free electronic newsletter  
for prisoners via CorrLinks.  
Add news@prisonlawblog.com  
to subscribe. The content  
is curated specifically  
for prisoners.

#### **SURROGATE SISTERS**

Celebrating 18+Years in Business  
No Games. We Sell Photos of Sexy  
Women, Gifts for Loved Ones,  
Erotic Stories & Pen-Pal Service  
Free Info & Flyer Send SASE to:  
Surrogate Sister – PN  
PO Box 95043, Las Vegas, NV 89193

#### **Prisonerinmatefamilyservice.com**

Send a SASE for a free catalog;  
PO Box 1852, Pismo Beach, CA 93448  
We buy stamps — \$7.50 a book;  
Single stamps .25 cents; Amazon  
Orders, copies of photos/artwork  
And SO much more!  
FamilyInmateSev@aol.com

#### **LOCAL PHONE NUMBERS \$2.50/MO.**

USA anywhere 5¢/min. To MX 15¢  
Great rates all over the world!  
No signup fee, no hidden fees!  
Refer new cust, 300 free mins!  
www.FreedomLine.net to sign up  
or write FreedomLine, Box 7-WCB  
C'ville, IN 47331. Save BIG \$\$\$!

#### **\*\*Bottle Thoughts Gift Store\*\***

Show someone you are thinking of  
them by sending a Special Gift  
Send SASE for FREE Brochure  
PO Box 110752, Carrollton, TX 75011  
Corrlinks: sales@bottlethoughts.com  
Contact us 1-877-705-0425  
FREE Shipping on All Gift Orders

#### **Celebrity Photos For Sale:**

Send self-addressed stamped  
envelope for lists. Name stars  
you would like to order photos of  
Photos are Non-Nude.  
Photoworld-PLN  
PO Box 401016  
Las Vegas, NV 89140

#### **Actual Innocence**

Explains how the innocent are convicted  
by faulty eyewitness testimonies, police  
perjury, expert witnesses, prosecutorial  
misconduct, etc., and how DNA testing  
is used to free the innocent.  
\$17.99 from PLN's Book Store!  
See page 61 for more information.

makes it into a secure location, it's a perfect example of incompetence and is shocking," said Merrill's attorney, Phillip Hayes. Surveillance video showed Merrill putting an item into the trash, where a loaded 9mm handgun was later found by another prisoner on garbage detail. Merrill now faces additional charges of unlawful possession of a firearm by a felon. On March 17, 2014, Dallas County sheriff's deputy Reginald Harris was demoted after an internal inves-

tigation found he violated policy by failing to ensure that Merrill was searched.

**Texas:** On March 5, 2014, TDCJ Office of Inspector General investigators arrested former Eastham Unit prison guard Kevin Vallery for suspicion of bribery and possession of contraband in a penal institution. Vallery, who was discovered with two bundles of tobacco in his pants, admitted to accepting \$600 from a prisoner to smuggle the tobacco into the facility. A search of Vallery's vehicle in the parking lot led to the discovery of \$600 cash in the center console. He was taken to the Houston County Jail and subsequently

released on \$25,000 bond.

**Wisconsin:** On March 31, 2014, a prisoner performing grounds maintenance at the Rock County jail discovered Jimson weed (*Datura stramonium*) growing on the property, picked it and brought it into the jail. The hallucinogenic plant was then ingested by six prisoners. When they began acting strangely, medical staff was called in and the prisoners were taken to Mercy Hospital and Trauma Center. Jimson weed is not illegal, but jail officials were considering what charges, if any, could be filed against the prisoners for bringing it into the facility. ■

## Criminal Justice Resources

### **ACLU National Prison Project**

Handles state and federal conditions of confinement claims affecting large numbers of prisoners. Publishes the NPP Journal (available online at: [www.aclu.org/national-prison-project-journal-fall-2011](http://www.aclu.org/national-prison-project-journal-fall-2011)) and the Prisoners' Assistance Directory (write for more information). Contact: ACLU NPP, 915 15th St. NW, 7th Fl., Washington, DC 20005 (202) 393-4930. [www.aclu.org/prisons](http://www.aclu.org/prisons)

### **Amnesty International**

Compiles information about prisoner torture, beatings, rape, etc. to include in reports about U.S. prison conditions; also works on death penalty issues. Contact: Amnesty International, 5 Penn Plaza, New York NY 10001 (212) 807-8400. [www.amnestyusa.org](http://www.amnestyusa.org)

### **Center for Health Justice**

Formerly CorrectHELP. Provides information related to HIV in prison – contact them if you are not receiving proper HIV medication or are denied access to programs due to HIV status. Contact: CHJ, 900 Avila Street, Suite 102, Los Angeles, CA 90012. HIV Hotline: (214) 229-0979 (collect calls from prisoners OK). [www.centerforhealthjustice.org](http://www.centerforhealthjustice.org)

### **Centurion Ministries**

Works to exonerate the wrongfully convicted, in both cases involving DNA evidence and those that do not. Centurion only takes 1-2 new cases a year involving actual innocence. They do not consider accidental death or self-defense murder cases, he said/she said rape cases, or child abuse or child sex abuse cases unless there is physical evidence. All case inquiries must be from the prisoner involved, in writing. Contact: Centurion Ministries, 221 Witherspoon Street, Princeton, NJ 08542 (609) 921-0334. [www.centurionministries.org](http://www.centurionministries.org)

### **Critical Resistance**

Seeks to build an international movement to abolish the Prison Industrial Complex, with offices in Florida, California, New York, Texas and Louisiana. Publishes The Abolitionist newsletter. Contact: Critical Resistance, 1904 Franklin Street #504, Oakland, CA 94612 (510) 444-0484. [www.criticalresistance.org](http://www.criticalresistance.org)

### **The Exoneration Project**

The Exoneration Project is a non-profit organization dedicated to working to free prisoners who were wrongfully convicted. The Project represents innocent individuals in post-conviction legal proceedings; typical cases involve DNA testing, coerced confessions, police misconduct, the use of faulty evidence, junk science and faulty eyewitness testimony, and ineffective assistance of counsel claims. Contact: The Exoneration Project, 312 North May Street, Suite 100, Chicago, Illinois 60607 (312) 789-4955. [www.exonerationproject.org](http://www.exonerationproject.org)

### **Family & Corrections Network**

Primarily provides online resources for families of prisoners related to parenting, children of prisoners, prison visitation, mothers and fathers in prison, etc. Contact: F&CN, 93 Old York Road, Suite 1 #510, Jenkintown, PA 19046 (215) 576-1110. [www.fcnetwork.org](http://www.fcnetwork.org)

### **FAMM**

FAMM (Families Against Mandatory Minimums) publishes the FAMMgram three times a year, which includes information about injustices resulting from mandatory minimum laws with an emphasis on federal laws. Recommended donation of \$10 for a subscription. Contact: FAMM, 1612 K Street NW #700, Washington, DC 20006 (202) 822-6700). [www.famm.org](http://www.famm.org)

### **The Fortune Society**

Provides post-release services and programs for prisoners in the New York City area and occasionally publishes Fortune News, a free publication for prisoners that deals with criminal justice issues, primarily in New York. Contact: The Fortune Society, 29-76 Northern Blvd., Long Island City, NY 11101 (212) 691-7554. [www.fortunesociety.org](http://www.fortunesociety.org)

### **Innocence Project**

Provides advocacy for wrongly convicted prisoners whose cases involve DNA evidence and are at the post-conviction appeal stage. Maintains an online list of state-by-state innocence projects. Contact: Innocence Project, 40 Worth St., Suite 701, New York, NY 10013 (212) 364-5340. [www.innocenceproject.org](http://www.innocenceproject.org)

### **Just Detention International**

Formerly Stop Prisoner Rape, JDI seeks to end sexual violence against prisoners. Provides counseling resources for imprisoned and released rape survivors and activists for almost every state. Contact: JDI, 3325 Wilshire Blvd. #340, Los Angeles, CA 90010 (213) 384-1400. [www.justdetention.org](http://www.justdetention.org)

### **Justice Denied**

Although no longer publishing a print magazine, Justice Denied continues to provide the most comprehensive coverage of wrongful convictions and how and why they occur. Their content is available online, and includes all back issues of the Justice Denied magazine and a database of more than 3,000 wrongly convicted people. Contact: Justice Denied, P.O. Box 68911, Seattle, WA 98168 (206) 335-4254. [www.justicedenied.org](http://www.justicedenied.org)

### **National CURE**

Citizens United for Rehabilitation of Errants (CURE) is a national organization with state and special interest chapters that advocates for rehabilitative opportunities for prisoners and less reliance on incarceration. Publishes the CURE Newsletter. \$2 annual membership for prisoners. Contact: CURE, P.O. Box 2310, National Capitol Station, Washington, DC 20013 (202) 789-2126. [www.curenational.org](http://www.curenational.org)

### **November Coalition**

Publishes the Razor Wire, a bi-annual newsletter that reports on drug war-related issues, releasing prisoners of the drug war and restoring civil rights. A subscription is \$10 for prisoners and \$30 for non-prisoners. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 684-1550. [www.november.org](http://www.november.org)

### **Prison Activist Resource Center**

PARC is a prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, able-ism, heterosexism and classism, specifically within the Prison Industrial Complex. PARC produces a free resource directory for prisoners, and supports activists working to expose and end the abuses of the Prison Industrial Complex and mass incarceration. Contact: PARC, P.O. Box 70447, Oakland, CA 94612 (510) 893-4648. [www.prisonactivist.org](http://www.prisonactivist.org)

# Prison Legal News Book Store

Fill in the boxes next to each book you want to order, indicating the quantity and price. Enter the Total on the Order Form on the next page.  
**FREE SHIPPING on all book orders OVER \$50 (effective 8-1-2014 until further notice). \$6.00 S/H applies to all other book orders.**

## SUBSCRIBE TO PLN FOR 4 YEARS AND CHOOSE ONE BONUS!

1. SIX (6) FREE ISSUES FOR 54 TOTAL! OR
2. PRISON PROFITEERS (A \$24.95 VALUE!) OR
3. THE HABEAS CITEBOOK (A \$49.95 VALUE!)

**Prison Profiteers**, edited by Paul Wright and Tara Herivel, 323 pages. \$24.95. This is the third book in a series of Prison Legal News anthologies that examines the reality of mass imprisonment in America. *Prison Profiteers* is unique from other books because it exposes and discusses who profits and benefits from mass imprisonment, rather than who is harmed by it and how. 1063

**The Habeas Citebook: Ineffective Assistance of Counsel**, by Brandon Sample, PLN Publishing, 200 pages. \$49.95. This is PLN's second published book, written by federal prisoner Brandon Sample, which covers ineffective assistance of counsel issues in federal habeas petitions. Includes hundreds of case citations! 1078

**Prison Nation: The Warehousing of America's Poor**, edited by Tara Herivel and Paul Wright, 332 pages. \$35.95. PLN's second anthology exposes the dark side of the 'lock-em-up' political agenda and legal climate in the U.S. 1041

**The Ceiling of America, An Inside Look at the U.S. Prison Industry**, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. \$22.95. PLN's first anthology presents a detailed "inside" look at the workings of the American justice system. 1001

**Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada**, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, PLN Publishing, 221 pages. \$49.95. Written by Missouri prisoner Jon Marc Taylor, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, para-legal and college courses by mail. 1071

**The Criminal Law Handbook: Know Your Rights, Survive the System**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 608 pages. \$39.99. Explains what happens in a criminal case from being arrested to sentencing, and what your rights are at each stage of the process. Uses an easy to understand question-and-answer format. 1038

**Represent Yourself in Court: How to Prepare & Try a Winning Case**, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 528 pages. \$39.99. Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. The authors explain what to say in court, how to say it, etc. 1037

**The Merriam-Webster Dictionary, New Edition**, 939 pages. \$8.95. This paperback dictionary is a handy reference for the most common English words, with more than 65,000 entries. 2015

**The Blue Book of Grammar and Punctuation**, by Jane Straus, 110 pages. \$19.99. A guide to grammar and punctuation by an educator with experience teaching English to prisoners. 1046

**Legal Research: How to Find and Understand the Law**, by Stephen Elias and Susan Levinkind, 568 pages. \$49.99. Comprehensive and easy to understand guide on researching the law. Explains case law, statutes and digests, etc. Includes practice exercises. 1059

**Deposition Handbook**, by Paul Bergman and Albert Moore, Nolo Press, 352 pages. \$34.99. How-to handbook for anyone who conducts a deposition or is going to be deposed. 1054

**Criminal Law in a Nutshell**, by Arnold H. Loewy, 5th edition, 387 pages. \$43.95. Provides an overview of criminal law, including punishment, specific crimes, defenses & burden of proof. 1086

## SUBSCRIBE TO PLN FOR 3 YEARS AND CHOOSE ONE BONUS!

1. FOUR (4) FREE ISSUES FOR 40 TOTAL! OR
2. PROTECTING YOUR HEALTH AND SAFETY (A \$10.00 VALUE!)

**Protecting Your Health and Safety**, by Robert E. Toone, Southern Poverty Law Center, 325 pages. \$10.00. This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how to enforce your rights, including through litigation. 1060

**Spanish-English/English-Spanish Dictionary**, 2nd ed., Random House. \$15.95. Spanish-English and English-Spanish. 60,000+ entries from A to Z; includes Western Hemisphere usage. 1034a

**Writing to Win: The Legal Writer**, by Steven D. Stark, Broadway Books/Random House, 283 pages. \$19.95. Explains the writing of effective complaints, responses, briefs, motions and other legal papers. 1035

**Actual Innocence: When Justice Goes Wrong and How to Make it Right**, updated paperback ed., by Barry Scheck, Peter Neufeld and Jim Dwyer, 403 pages. \$17.99. Describes how criminal defendants are wrongly convicted. Explains DNA testing and how it works to free the innocent. Devastating critique of police and prosecutorial misconduct. 1030

**All Alone in the World: Children of the Incarcerated**, by Nell Bernstein, 303 pages. \$19.95. Award-winning journalist Nell Bernstein takes an intimate look at the effects incarceration has on imprisoned parents and their children. 2016

**Everyday Letters for Busy People**, by Debra Hart May, 287 pages. \$21.99. Hundreds of sample letters that can be adapted for most any purpose, including letters to government agencies and officials. Has numerous tips for writing effective letters. 1048

**Roget's Thesaurus**, 717 pages. \$8.95. Helps you find the right word for what you want to say. 11,000 words listed alphabetically with over 200,000 synonyms and antonyms. Sample sentences and parts of speech shown for every main word. Covers all levels of vocabulary and identifies informal and slang words. 1045

**Beyond Bars, Rejoining Society After Prison**, by Jeffrey Ian Ross, Ph.D. and Stephen C. Richards, Ph.D., Alpha, 240 pages. \$14.95. *Beyond Bars* is a practical and comprehensive guide for ex-convicts and their families for managing successful re-entry into the community, and includes information about budgets, job searches, family issues, preparing for release while still incarcerated, and more. 1080

**Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A.**, by Mumia Abu Jamal, City Lights Publishers, 280 pages. \$16.95. In *Jailhouse Lawyers*, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned-advocates who have learned to use the court system to represent other prisoners. 1073

**With Liberty for Some: 500 Years of Imprisonment in America**, by Scott Christianson, Northeastern University Press, 372 pages. \$18.95. The best overall history of the U.S. prison system from 1492 through the 20th century. A must-read for understanding how little things have changed in U.S. prisons over hundreds of years. 1026

**Complete GED Preparation**, by Steck-Vaughn, 922 pages. \$24.99. This useful handbook contains over 2,000 GED-style questions to thoroughly prepare students for taking the GED test. It offers complete coverage of the revised GED test with new testing information, instructions and a practice test. 1099

**\* ALL BOOKS SOLD BY PLN ARE SOFTCOVER / PAPERBACK \***

**Hepatitis and Liver Disease: What You Need to Know**, by Melissa Palmer, MD, 457 pages. **\$19.99.** Describes symptoms & treatments of hepatitis B & C and other liver diseases. Includes medications to avoid, what diet to follow and exercises to perform, plus a bibliography. 1031

**Arrested: What to Do When Your Loved One's in Jail**, by Wes Denham, 240 pages. **\$16.95.** Whether a defendant is charged with misdemeanor disorderly conduct or first-degree murder, this is an indispensable guide for those who want to support family members, partners or friends facing criminal charges. 1084

**Prisoners' Self-Help Litigation Manual**, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 960 pages. **\$39.95.** The premiere, must-have "Bible" of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Highly recommended! 1077

**How to Win Your Personal Injury Claim**, by Atty. Joseph Matthews, 7th edition, NOLO Press, 304 pages. **\$34.99.** While not specifically for prison-related personal injury cases, this book provides comprehensive information on how to handle personal injury and property damage claims arising from accidents. 1075

**Sue the Doctor and Win! Victim's Guide to Secrets of Malpractice Lawsuits**, by Lewis Laska, 336 pages. **\$39.95.** Written for victims of medical malpractice/neglect, to prepare for litigation. Note that this book addresses medical malpractice claims and issues in general, not specifically related to prisoners. 1079

**Advanced Criminal Procedure in a Nutshell**, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **\$43.95.** This text is designed for supplemental reading in an advanced criminal procedure course on the post-investigation processing of a criminal case, including prosecution and adjudication. 1090

**Our Bodies, Ourselves**, by The Boston Women's Health Book Collective, 944 pages. **\$26.00.** This book about women's health and sexuality has been called "America's best-selling book on all aspects of women's health," and is a great resource for women of all ages. 1082

**Arrest-Proof Yourself**, by Dale Carson and Wes Denham, 288 pages. **\$14.95.** This essential "how not to" guide written by an ex-cop explains how to act and what to say when confronted by the police to minimize the chances of being arrested and avoid additional charges. Includes information on basic tricks that police use to get people to incriminate themselves. 1083

**Nolo's Plain-English Law Dictionary**, by Gerald N. Hill and Kathleen T. Hill, 496 pages. **\$29.99.** Find terms you can use to understand and access the law. Contains 3,800 easy-to-read definitions for common (and not so common) legal terms. 3001

**Criminal Procedure: Constitutional Limitations**, by Jerold H. Israel and Wayne R. LaFave, 7th edition, 603 pages. **\$43.95.** Intended for use by law students, this is a succinct analysis of constitutional standards of major significance in the area of criminal procedure. 1085

**Win Your Lawsuit: Sue in CA Superior Court without a Lawyer**, by Judge Roderic Duncan, 445 pages (4th edition 2010). **\$39.99.** This plain-English guide shows you how to prepare a complaint, file and serve papers, participate in settlement negotiations, present a case and much more. The 4th edition has been revised to reflect recent court procedures and includes updated forms. 2014

**Coming Soon! Disciplinary Self-Help Litigation Manual**, by Daniel Manville. By the co-author of the *Prisoners' Self-Help Litigation Manual*, this book provides detailed information about prisoners' rights in disciplinary hearings and how to enforce those rights in court. Published by Prison Legal News Publishing, this title should be available by Dec. 15, 2014.

### Subscription Rates

	1 year	2 years	3 years	4 years
<b>Prisoners</b>	<b>\$30</b>	<b>\$ 60</b>	<b>\$ 90</b>	<b>\$120</b>
<b>Individuals</b>	<b>\$35</b>	<b>\$ 70</b>	<b>\$105</b>	<b>\$140</b>
<b>Professionals</b>	<b>\$90</b>	<b>\$180</b>	<b>\$270</b>	<b>\$360</b>

(Attorneys, agencies, libraries)

### Subscription Bonuses

- 2 years** - 2 bonus issues for 26 total issues  
**3 years** - 4 bonus issues (40 total) or a bonus book as listed on pg. 61  
**4 years** - 6 bonus issues (54 total) or a bonus book as listed on pg. 61

(All subscription rates and bonus offers are valid as of 8-1-2014)



Purchase with Visa, MasterCard, AmEx or Discover by phone: **561-360-2523**

Or buy books and subscriptions online: **www.prisonlegalnews.org**



### Mail Payment and Order to:

Prison Legal News  
P.O. Box 1151  
Lake Worth, FL 33460

All purchases must be pre-paid. Prisoners can pay with new first-class stamps (strips or books only, no single stamps) or pre-stamped envelopes, if allowed by institutional policies.

Please Change my Address to what is entered below ☐

### Mail Order To:

Name: \_\_\_\_\_  
 DOC #: \_\_\_\_\_  
 Suite/Cell: \_\_\_\_\_  
 Agency/Inst: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_

### Subscribe to Prison Legal News

\$ Amount

- 6 month subscription (prisoners only) - \$18 \_\_\_\_\_  
 1 yr subscription (12 issues) \_\_\_\_\_  
 2 yr subscription (2 bonus issues for 26 total!) \_\_\_\_\_  
 3 yr sub (write below which FREE book you want) \_\_\_\_\_  
     or 4 bonus issues for 40 issues total! \_\_\_\_\_  
 4 yr sub (write below which FREE book you want) \_\_\_\_\_  
     or 6 bonus issues for 54 issues total! \_\_\_\_\_  
 Single back issue or sample copy of PLN - \$5.00 each \_\_\_\_\_

### Books Orders

(No S/H charge on 3 & 4-year

subscription free books OR book orders OVER \$50!) Qty.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Add \$6.00 S/H to BOOK ORDERS under \$50**

(PLN subs do not count towards \$50 for free S/H for book orders)

**FL residents ONLY add 6% to Total Book Cost**

**TOTAL Amount Enclosed:** \_\_\_\_\_

\* **NO REFUNDS on PLN subscription or book orders after orders have been placed.** \*

\* **We are not responsible for incorrect addresses or address changes after orders have been placed.** \*



# PRISONLEGALNEWS.org

**Dedicated to Protecting Human Rights**

>>FREE Data Search |

Decisions

Investigations

Audits

Publications

Cases

Verdicts

Settlements

**If you need to know about prisons and jails or are litigating a detention facility case, you can't afford not to subscribe to our website!**

**Online subscribers get unlimited, 24-hour a day access to the website and its content!**

**Sign up for PLN's FREE listserv to receive prison and jail news and court rulings by e-mail.**

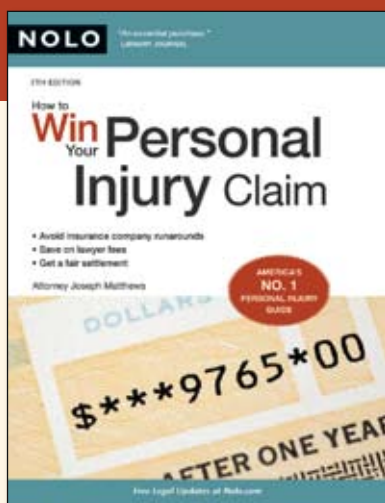
- ▶ PLN's website offers all issues of PLN in both searchable database and PDF formats. Issues are indexed and posted as soon as they go to press.
- ▶ Publications section has numerous downloadable government reports, audits and investigations from around the country.
- ▶ Full text decisions of thousands of court cases, published and unpublished.
- ▶ All content is easy to print for downloading and mailing to prisoners.
- ▶ Most complete collection of prison and jail related verdicts and settlements anywhere.
- ▶ Order books, print subscriptions and make donations on line.

- ▶ Brief bank with a wide assortment of winning motions, briefs, complaints and settlements.
- ▶ Links to thousands of prison, jail, criminal justice and legal websites around the world.
- ▶ Thousands of articles and cases, all fully indexed by more than 500 subjects, searchable by case name, case year, state of origin, court, author, location, case outcome, PLN issue and key word search.
- ▶ Search free, pay only if you find it!
- ▶ The highest quality, most comprehensive prison litigation news and research site in the world.

**Affordable rates to meet your budget  
\$19.95 per month • \$149.95 per year**

**Subscribe to Prison Legal News Online! <http://www.prisonlegalnews.org>**

## Great Self-Help Book Deals From Prison Legal News!



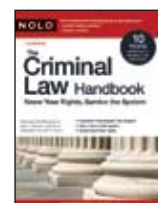
**Order from Prison Legal News**  
Add \$6 shipping for orders under \$50  
  
Prison Legal News  
PO Box 1151  
Lake Worth, FL 33460  
Phone: 561-360-2523  
[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

### How to Win Your Personal Injury Claim

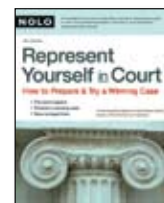
\$34.99

*How to Win Your Personal Injury Claim* shows you how to handle almost every accident situation, and guides you through the insurance claim process, step by step. Learn how to:

- protect your rights after an accident
- determine what your claim is worth
- handle a property-damage claim
- deal with uncooperative doctors, lawyers and insurance companies
- counter the special tactics insurance companies use
- prepare a claim for compensation
- negotiate a full and fair settlement
- stay on top of your case if you hire a lawyer



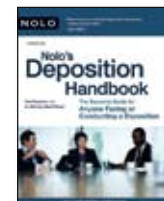
The Criminal Law Handbook  
\$39.99



Represent Yourself in Court  
\$39.99



Legal Research  
\$49.99



Nolo's Deposition Handbook  
\$34.99

**NOLO  
YOUR LEGAL COMPANION**





## Prison Legal News

PO Box 1151  
Lake Worth FL 33460

Change Service Requested

Non-Profit Org.  
U.S. Postage  
PAID  
Portland OR  
Permit No. 3142

### Subscription Renewal

Subscriptions expire after the issue shown on the label is mailed. For example, if the label says: EXPIRES 02/2015, then the subscription expires after the February 2015 issue is mailed. Please renew at least 2 months before the expiration date. IF THE LABEL SAYS **EXPIRES: 12/2014** THIS IS YOUR LAST ISSUE. Please renew immediately to avoid missing any issues.

### Change of Address

If you move or are transferred, please notify PLN as soon as possible so your issues can be mailed to your new address! PLN only accepts responsibility for sending an issue to the address provided at the time an issue is mailed!

**New & Improved**



# INMATE SHOPPER

**New Owners**

EXPANDED CONTENT IN EVERY ISSUE STARTS NOV. '14

<b>Non Nude Girls</b> <b>Pen Pal Resources</b> <b>Gift Shops</b> <b>Catalogs to Order</b> <b>Sexy Photo Sellers</b> <b>Typists</b> <b>Personal Assistants</b> <b>Magazine Sellers</b> <b>Publishing Services</b> <b>Contains 250+ pgs.</b>	<b>SPORT SCHEDULES (seasonal)</b> <b>Football • Basketball • Hockey</b> <b>Baseball • Nascar • Soccer</b>  <b>SEGMENTS FROM THE ARTS</b> <b>Writing • Music • Art • Poetry</b>  <b>ENTERTAINMENT</b> <b>Puzzles • Trivia • Games • Hobbies • Jokes</b>  <b>SPECIAL FEATURE IN EACH ISSUE</b>	<b>Business Directory</b> <b>Business Ratings</b> <b>GLBT Section</b> <b>Contest for Writers &amp; Artists</b> <b>Articles, Tips &amp; Facts</b> <b>Resources</b> <b>New Content Every Issue</b> <b>Something for Everyone</b> <b>3 New Issues Per Year</b>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**No Order Form Needed:**  
CLEARLY WRITE ON PAPER & SEND WITH PAYMENT TO:  
**INMATE SHOPPER**  
BOX 533, NORTH DIGHTON, MA 02764  
[WWW.INMATESHOPPER.COM](http://WWW.INMATESHOPPER.COM)

⇒ Send Me the **CURRENT ISSUE** Inmate Shopper:

⇒ Send Me the **NEXT ISSUE** Inmate Shopper: ☐ March ☐ July ☐ Nov/Holiday

⇒ Send Me the **CENSORED ISSUE** Inmate Shopper Without Pen Pal Content & No Sexy Girls - No More Rejections

**Order Your New Copy Today... Only \$24.99 Incl. S&H w/tracking**